

# FIRST REPORT OF THE WORKING PARTY ON LEGAL AID IN CRIMINAL PROCEEDINGS

*To the Right Honourable R. A. Butler, C.H., M.P.,*

*Her Majesty's Principal Secretary of State for the Home Department,  
and the Right Honourable the Viscount Kilmuir, G.C.V.O.,  
Lord High Chancellor of Great Britain.*

## INTRODUCTION

1. We were constituted a Working Party following the bringing into force on 14th March, 1960, of sections 21 to 23 of the Legal Aid and Advice Act, 1949, and the making of the Regulations<sup>(1)</sup> which came into force on the same date.

2. We had no formal terms of reference; our principal task was to review the working of the new arrangements, which came into force on 14th March, 1960, and matters arising therefrom, and to make suggestions for any adjustments in arrangements under sections 22 and 23 of the Act, or for changes in practice.

3. It was thought that a review during the first twelve months of the new scheme would be sufficient to give an adequate picture, but we have found our task one of some complexity, and the gathering of necessary material and its consideration has taken longer.

4. In this Report we have concentrated our attention on the Poor Prisoners' Defence (Defence Certificate) Regulations and the Poor Prisoners' Defence (Legal Aid Certificate) Regulations. These cover the major part of the field, the former, proceedings in courts of assize and quarter sessions, and the latter, proceedings in magistrates' courts, and we thought that it would be useful to set out our conclusions without waiting until we had completed our consideration of the Appeal Aid Certificate Rules and the Criminal Appeal (Fees and Expenses) Regulations.

5. Sections 21 to 23 of the Legal Aid and Advice Act, 1949, do not affect the provisions governing the grant of legal aid, which remains the responsibility of the courts, or the assignment of solicitors and counsel in such cases, or, except as regards magistrates' courts, the arrangements by which solicitors and counsel receive payment for their services, by order of the court, from local funds.

6. Section 21 lays down a general principle, that the Secretary of State, in making regulations as to the amounts payable to solicitors and counsel assigned to give legal aid under the Criminal Appeal Act, 1907, the Poor Prisoners' Defence Act, 1930, or the Summary Jurisdiction (Appeals) Act, 1933, or to counsel who, on a person's trial before a court of assize or quarter sessions, undertakes his defence at the request of the judge or chairman under subsection (3) of section 3 of the Poor Prisoners' Defence Act, 1930, and any person by whom any amount so payable is determined in a particular case, shall have regard to the principle of allowing fair remuneration according to the work actually and reasonably done.

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<sup>(1)</sup> The Appeal Aid Certificate Rules, 1960 (S.I. No. 258).

The Criminal Appeal (Fees and Expenses) Regulations, 1960 (S.I. No. 259).

The Poor Prisoners' Defence (Defence Certificate) Regulations, 1960 (S.I. No. 260).

The Poor Prisoners' Defence (Legal Aid Certificate) Regulations, 1960 (S.I. No. 261).

7. Sections 22 and 23, to which we shall refer in more detail later, contain as their main provisions, respectively (a) that where a legal aid certificate has been granted the costs of the defence, as taxed or assessed by The Law Society, shall be paid out of the Legal Aid Fund, and (b) that where a person is granted free legal aid under section 10 of the Criminal Appeal Act, 1907, section 1 of the Poor Prisoners' Defence Act, 1930, or section 2 of the Summary Jurisdiction (Appeals) Act, 1933, or counsel undertakes a defence at assizes or quarter sessions at the request of the judge, the costs of the defence (which continue to be taxed or assessed by the court) shall be repaid to the local authority by the Secretary of State.

8. We met first in May, 1960, and we reached the conclusion that it was necessary to make a special approach to the courts to collect information about the working of the new arrangements. The Home Office, at our request, accordingly addressed a circular to all clerks of assizes and clerks of the peace asking for detailed returns of particulars of cases and payments ordered under each defence certificate during either a fortnight in November, 1960, or the next complete sessions following 1st November, 1960.

9. All courts except one complied with this request, and we are most grateful to clerks of assize and clerks of the peace for undertaking a task which must necessarily have added to the heavy burden of work which they and their staffs have to carry.

10. Summaries of information obtained from the returns are given in Appendices 2, 3, 4 and 5. The analysis of these figures, which covered nearly 1,800 cases, naturally took some considerable time. In the meantime, the information which had come to us from various courts and from the legal profession suggested that it would be useful, and would be welcomed by the courts, for advice and information to be passed on to the courts on a number of questions which had been raised. After some discussion by the Working Party of the points to be covered, the Home Office issued a circular on 17th May, 1961 (Home Office Circular No. 90/1961) which, in addition to dealing with a number of particular points, repeated, with the permission of the Lord Chief Justice, advice which he had given. This circular is reproduced in Appendix 1.

11. Thus, the statistics which we collected relate to a date before the issue of the Home Office circular of 17th May, 1961, and it may well be that some of the practices which we refer to later in this Report have been modified or changed as a result of that circular. We did not, however, consider that we should be justified in repeating at this stage our request to the courts for detailed returns; this would have involved a great amount of work for all concerned and in our view the circular to which we have referred, and the relevant parts of our Report, may be considered as a whole, as a body of suggestions for assisting the satisfactory working of the arrangements which came into force on 14th March, 1960.

12. We deal in more detail in the later part of this Report with the costs of legal aid in criminal cases, but it may be stated here that we are informed that the returns of expenditure submitted to the Home Office by the councils of counties and county boroughs show that the total amount paid out of local funds in respect of legal aid for the period 14th March, 1960, to 31st March, 1961, was £601,135, i.e. 12,111 cases at an average cost of £49. 12s. 8d. a case. This expenditure, which is reimbursed by the Exchequer, includes, in addition to defence certificates, appeal aid certificates and legally-aided cases in the Court of Criminal Appeal; but these account for a proportionately small part of the total. Expenditure on legal aid certificates during the same period, which is borne by the Legal Aid Fund, amounted to £91,862, i.e. 4,915 cases at an average cost of £18. 13s. 9d. a case.

13. It is not possible to make any exact comparison with the costs of legal aid in criminal cases before March, 1960, since no central record of cost was maintained prior to that date. We understand however that in 1959 the local authorities made returns to the Home Office of expenditure from local funds, covering a period of six months, which showed that the average cost of a defence certificate, appeal aid certificate and legally-aided case in the Court of Criminal Appeal was about £16. On the basis of this figure, the overall cost of legal aid in the higher courts in the financial year 1959/60 would be in the region of £150,000. (At that time the maximum brief and basic fees payable under a defence certificate or legal aid certificate in an ordinary case were £4. 17s. 0d. to counsel and £7. 1s. 9d. to solicitors) (the Poor Prisoners' Defence (Fees and Expenses) Regulations, 1953, S.I. No. 1429 and the Poor Prisoners' Defence (Fees and Expenses) Regulations, 1959, S.I. No. 2240). Similar particulars are not available for the purpose of comparison in the case of legal aid certificates. If the maximum fees prescribed by the Regulations (see above) were normally paid as a matter of course, it is estimated that the cost of legal aid in magistrates' courts for the financial year 1959/60 would have been about £40,000. It is probable however that the actual expenditure was lower than this figure.

14. In the following paragraphs of our Report we deal, in Part I with the Poor Prisoners' Defence (Defence Certificate) Regulations and the Poor Prisoners' Defence (Legal Aid Certificate) Regulations. In Part II we have thought it useful to set out our views on certain matters which do not arise directly from the Regulations. We have not enquired into the basic structure of the arrangements for legal aid in criminal cases in England and Wales, but it has been impossible to study the working of the new arrangements of March, 1960, without considering some points which arise not so much from the new Regulations as from the structure on which they are operating. Our comments in Part II of this Report are made upon this basis.

## PART I

### REGULATIONS GOVERNING PAYMENTS TO COUNSEL AND SOLICITORS

15. Our main task has been to ascertain how far effect is given to the principle of fair remuneration set out in section 21 of the Legal Aid and Advice Act, 1949, (a) in the existing Regulations governing payments to counsel and solicitors assigned to the defence of poor prisoners and (b) in the practice of taxing officers when assessing fees in particular cases. We have been chiefly concerned with the assessment at assizes and quarter sessions of fees to counsel and solicitors assigned under a defence certificate; these cases, where taxation is the responsibility of the court, are dealt with in paragraphs 16 to 43 of the Report. We have also given some consideration to information furnished by The Law Society on the remuneration of solicitors and counsel assigned under a legal aid certificate in summary cases and preliminary hearings before examining justices; these cases, where taxation is the responsibility of the Area Committees of The Law Society, are dealt with in paragraphs 44 to 55 of the Report.

#### A. Defence Certificates and Defences under Section 3(3) of the Poor Prisoners' Defence Act, 1930

##### (1) THE POOR PRISONERS' DEFENCE (DEFENCE CERTIFICATE) REGULATIONS, 1960

16. *Summary of Regulations.* Fees are determined by the court within the limits prescribed by the Regulations. The Regulations provide for payment of a basic fee of not less than £8. 8s. 0d. and not exceeding £78. 15s. 0d. to solicitors and a brief fee of not less than £8. 13s. 0d. and not exceeding £64. 10s. 0d. to counsel. In cases where two counsel are

assigned to the defence the fees are at large. In assessing fees the court is required to take into account all the relevant circumstances, including the nature, importance, complexity or difficulty of the work, and the time involved. Where a trial is not concluded on the day on which it started, additional fees, not exceeding, in the case of counsel, half of the brief fee, and in the case of a solicitor, £15. 15s. 0d. (or, in certain circumstances, £21. 0s. 0d.) are payable in respect of each additional day during which the trial lasts. (In the case of counsel a 'day' may be a period of five hours for this purpose.) Where a solicitor or counsel represents two or more persons charged under the same indictment he is entitled to a percentage increase in the fees allowed. Fees are also allowable to counsel for a conference or consultation, for advice in writing or for an application to the court for a case to stand out of the list. A solicitor is entitled to travelling and out-of-pocket expenses actually and reasonably incurred. Where a solicitor assigned under a defence certificate reasonably undertakes work in giving notice of appeal or of an application for leave to appeal or in applying for a case to be stated, he is entitled to an additional payment for the work, including a fee for counsel's opinion in a case where counsel has been assigned.

17. The Regulations include an "escape clause" which provides that where it appears to the court that for any reason, including the exceptional length, complexity or difficulty of the case, the sums allowable under the Regulations would not provide fair remuneration, and the court certifies accordingly, the court may allow fees in excess of the prescribed maxima.

18. A solicitor or counsel may make written representations to the presiding judge as regards any sum allowed by the court or as regards a refusal by the court to operate the "escape clause", and the presiding judge may alter the sum allowed or grant a certificate enabling the "escape clause" to be operated.

19. *Adequacy of prescribed fees.* The evidence submitted to us does not suggest that the maximum brief fees for counsel, or the maximum basic fees for solicitors, at present prescribed by the Regulations, are inadequate. The returns made by the courts included only a handful of cases where it was found necessary to invoke the "escape clause" and in the large majority of cases the fees paid were well below the prescribed maxima. We also found no evidence that the minimum fees prescribed are too low for the simplest type of case to which they were intended to apply (see, however, paragraph 27 where we discuss the payment of minimum fees). We do not therefore recommend any alteration in the maximum and minimum fees prescribed in Regulations 1(1) and 2(1).

20. *Fee for second indictment.* There is some divergence of practice in the courts over the payment of fees to counsel and solicitors assigned to the defence where a person is tried under two separate indictments, often for widely different offences. Some courts pay a separate fee for the second indictment whereas in other courts a single fee only is paid. It seems doubtful whether two fees can properly be paid in cases where only one defence certificate has been granted. On the other hand it is obviously right that counsel and solicitors should be fairly remunerated for work on a second indictment. Our view is that a single fee should be paid to counsel and solicitors in such cases and that in fixing the fee account should be taken of the work done on the second indictment. We accordingly recommend that Regulation 4 should be amended to include work done on a second indictment among the matters to be taken into account in determining the sum to be paid to counsel and solicitors.

21. *Fee for retrial.* We have been informed that in the case of a retrial a second defence certificate is often granted, but that this is not the invariable practice. Where a second certificate is not granted the work done in respect of the retrial should be taken into account in fixing the fees of counsel and solicitors. We accordingly recommend that Regulation 4 should be amended to include such work among the matters to be taken into account in determining the payments to be made under a defence certificate.

22. *Refresher fees.* Refresher fees payable to counsel assigned under a defence certificate are limited by Regulation 2(2) to fifty per cent of the brief fee. Refresher fees paid to counsel for the prosecution are not limited by regulation but in practice do not exceed fifty per cent, except at the Central Criminal Court,

the County of London Sessions, Middlesex Quarter Sessions and certain other courts, where refreshers in excess of fifty per cent are paid in certain cases. On the basis of such payment of refreshers to prosecution counsel, we consider that following principles of fair remuneration and the relationship of fees of counsel for the prosecution and for the defence (see paragraph 5 of Home Office Circular No. 90/1961, at Appendix 1), the sums awarded to counsel assigned under a defence certificate at the courts referred to in the previous sentence should differ from those paid to counsel for the prosecution only to the extent that this can be justified by differences in the work done, and that these courts should consequently have power to award counsel for the defence refresher fees in excess of fifty per cent where necessary to preserve the principle of fair comparison. It appears to us that this might best be achieved by the use of the "escape clause" in the Regulations (Regulation 5) which enables a court to pay sums in excess of those allowed by the Regulations if it appears to the court that for any reason these sums would not provide fair remuneration. It is not clear that Regulation 5 in its present form would allow this to be done, and we recommend that the Regulation should be suitably amended.

23. *Conference fees.* Regulation 2(3) provides that counsel shall be allowed

"(a) in respect of any conference or consultation in chambers or elsewhere lasting not more than half an hour, a fee not exceeding £2. 7s. 0d. or, in the case of two counsel being assigned or requested to act such fees as appear to be proper in all the circumstances of the case

(b) in respect of any conference or consultation in chambers or elsewhere lasting more than half an hour, such fee as appears to be proper in all the circumstances of the case".

The information furnished by the courts shows that where a conference fee is allowed the maximum fee of £2. 7s. 0d. is usually paid for a conference lasting not more than half an hour but that a number of courts pay smaller fees. In the case of counsel assigned to give legal aid in civil proceedings in magistrates' courts and courts of quarter sessions a standard fee of £2. 7s. 0d. is prescribed for a conference lasting not more than half an hour (the Legal Aid (General) (Amendment) Regulations, 1961<sup>(1)</sup>, Second Schedule, paragraph 2(4)). We recommend that Regulation 2(3) (a) of the Poor Prisoners' Defence (Defence Certificate) Regulations should be amended to provide, similarly, that in criminal proceedings where a single counsel is assigned a standard fee of £2. 7s. 0d. should be paid for a conference lasting not more than half an hour.

24. *Duplication of payments.* Regulation 4(3) provides that in determining the sums to be paid to a solicitor or counsel, the court shall take into account any payment which has already been made to him in the same case under a legal aid certificate. Regulation 4(3) of the Poor Prisoners' Defence (Legal Aid Certificate) Regulations, 1960, similarly provides that in taxing and assessing the sums to be paid to a solicitor or counsel, The Law Society shall take into account any payment which has already been made to him in the same case under a defence certificate. It was stated in paragraph 9(d) of Home Office Circular No. 90/1961 that it had not been held to be a requirement of Regulation 4(3) that taxing officers should defer the settlement of payments under a defence certificate until payment under a legal aid certificate granted in the same case had been determined, and it was suggested that whichever certificate was the first to be settled for payment, the appropriate officer settling payment for the second should take account of what had already been paid. In practice payment is usually made under a defence certificate before any payment is made under a legal aid certificate in the same case.

(1) S.I. No. 556.

25. We have considered whether adequate safeguards exist to ensure that in such cases payment is not made for the same work under both a defence certificate and a legal aid certificate and if not, whether any changes are necessary in the Regulations. We have reached the conclusion that there is no serious danger of duplication of payments and that as a general principle it should be satisfactory, in cases where a legal aid certificate has been granted in the preliminary proceedings, to limit payments under a defence certificate to work done after the committal for trial. There appears to be no need to make this mandatory, however, and we do not recommend any amendment of the Regulations.

## (2) THE PRACTICE OF TAXING OFFICERS IN APPLYING THE POOR PRISONERS' DEFENCE (DEFENCE CERTIFICATE) REGULATIONS

26. We have examined the information furnished by clerks of assize and clerks of the peace detailing the fees paid in individual cases (see paragraph 8) with a view to ascertaining how the statutory provisions relating to the remuneration of counsel and solicitors were being applied in practice, and in particular, how far effect was being given to the principle of fair remuneration.

27. *Assessment of fees.* The returns showed that practices and standards of assessment varied considerably in different courts. Some indication of this variation is apparent in the analysis of the returns set out in Appendices 3 and 4 of this Report. Thus, it will be observed from Appendix 3 that in the case of crimes of violence (excluding murder) where the defendant pleaded guilty the minimum brief fee prescribed by the Regulations (£8. 13s. 0d.) was paid to counsel in 61.1 per cent of the cases at borough quarter sessions, 36.4 per cent of the cases at county quarter sessions and 9.7 per cent of the cases at assizes; the minimum basic fee prescribed for solicitors (£8. 8s. 0d.) was paid in 33.3 per cent, 20 per cent and 9.3 per cent respectively of these cases. The reason for such a divergence between borough and county quarter sessions is not apparent. The minimum fees were intended to be applicable only to the simplest type of case in which a defence certificate was granted, but the proportion of cases generally in which minimum fees were paid is so high as to suggest that the Regulations were not being applied as intended.

28. The returns also indicated a considerable variation in the higher ranges of fees paid by different courts. Appendix 4 shows, for example, that for crimes of violence (excluding murder) where the defendant pleaded not guilty, brief fees in excess of £24 were paid to counsel in 59.1 per cent of the cases at borough quarter sessions, 44.2 per cent of the cases at assizes and only 9.5 per cent of the cases at county quarter sessions. The corresponding figures for the basic fees paid to solicitors were 30 per cent, 44 per cent and 9.5 per cent respectively. The returns also showed fewer cases than might have been expected where fees in excess of the maxima prescribed by the Regulations were paid. Appendix 4 shows that in cases where the defendant pleaded not guilty, no fees in excess of the maxima were paid for crimes of violence excluding murder, or for sexual offences, and that for crimes of robbery, fraud and larceny such fees were paid to counsel only in 2.6 per cent of the cases at borough quarter sessions and to solicitors only in 4.6 per cent of the cases at assizes.

29. It appeared from the returns that a number of courts were employing "rule of thumb" methods in the assessment of fees. Among the unsatisfactory features which came to our notice were

- (1) the practice of some courts of automatically assessing the fees of defence counsel and solicitor at a lower figure than, or the same figure as, those of counsel and solicitor for the prosecution;

- (2) the practice of some courts of automatically fixing the fees of defence solicitors at a lower figure than those of counsel for the defence;
- (3) the practice of a few courts, in the case of "guilty" pleas, of automatically assessing fees at the minimum prescribed by the Regulations.

30. It is understandable that with a system of taxation comprising some one hundred and fifty separate taxing authorities there should be some variation in the assessment of fees. This is probably inevitable. It should, however, be possible to arrive at a greater uniformity of practice in the application of the Regulations, than is reflected by our information and even as regards the assessment of fees, we consider it desirable that standards of assessment should be more uniform than is suggested by the figures quoted above.

31. We take the view from the returns made and from information supplied by The Law Society that fair and reasonable remuneration was not being paid to defence solicitors in many cases prior to the issue of Home Office Circular No. 90/1961 and from information which has been placed before us we are satisfied that this position still exists in some courts. Some taxing officers apply unofficial scales of costs, and some courts have not completely abandoned the view that when conducting defences under a defence certificate the legal profession are to be expected to subsidise the costs. Regulation 4 of the Poor Prisoners' Defence (Defence Certificate) Regulations, 1960, sets out the factors to be taken into account in assessing defence fees. We are of the opinion that taxing officers in assessing defence solicitors' fees should have particular regard, not only to the nature, importance, complexity or difficulty of the work, but to the number of hours reasonably spent both in preparing the case and in attendance at court, and in this connection the general level of remuneration of solicitors must be taken into account.

32. The same considerations apply to fees paid to defence counsel. In the assessment of such fees, however, the yardstick should be the fees paid to prosecuting counsel in accordance with the principles set out by the Lord Chief Justice in his note to the judges, the relevant extract from which has been reproduced in the second Appendix of Home Office Circular No. 90/1961 (Appendix 1).

33. We consider it necessary to draw attention here (in paragraphs 34 to 43 below) to certain provisions in the Regulations which, it would appear, are not being implemented in some courts. We recognise that the interpretation of the Regulations is a matter for the courts; in making our comments, however, we have had in mind what we understand to have been the intention when the Regulations were made, and the practice followed by the majority of courts.

34. "*Escape Clause*". Some courts apparently take the view that the "escape clause" is applicable only to Regulations 1(1) and 2(1); in other words, that where the court certifies under Regulation 5 that "for any reason, including the exceptional length, complexity or difficulty of the case, the sums payable by virtue of these Regulations or any of them would not provide fair remuneration . . ." the only fees which can be increased beyond the limits fixed by the Regulations are the solicitor's basic fee and the counsel's brief fee. It seems clear, however, from the wording of Regulation 5 that the "escape clause" may be applied to any of the fees payable under the Regulations.

35. *Refresher fees*. The returns made by the courts revealed a few cases lasting more than one day where no refresher appeared to have been paid, or where counsel and solicitor had been remunerated for two or more extra days by the payment of a single sum. It may be that an element for refreshers had been included in the basic fees; the Regulations require, however, that the two elements should be separately assessed and payment made for each.

36. *Additional defendants.* The returns also showed that in a few cases no increases appeared to have been made in the fees payable to counsel and solicitor who had represented two or more persons charged in the same indictment, contrary to Regulation 3, which requires the payment of increased fees to counsel and solicitor in such circumstances. Where such increases were made, in general the increases allowed were 40 per cent for the second defendant and 20 per cent for subsequent defendants (i.e. the maximum increases prescribed by the Regulations).

37. *Fees for applications and opinions.* Although Regulation 2(3) provides for the payment of additional fees to counsel in respect of an application to the court for a case to stand out of the list, or for advice in writing where, in the opinion of the court, it was reasonably necessary to obtain counsel's advice, we observed from the returns that in few cases were fees paid for applications or advice. We have no information to show how frequently these fees are being claimed by counsel or the extent to which they are being disallowed by taxing officers. We think it should be made clear, however, if necessary by amendment of the Regulations, that counsel for the defence is entitled to a fee for an application, not only where the application is by the defence but also where he appears at the hearing of an application made by the prosecution.

38. *Conference fees.* In accordance with Regulations 2(3) and 4(2) counsel is entitled to a fee in respect of "any conference or consultation in chambers or elsewhere" where the court is satisfied that the conference or consultation is "reasonably necessary". Provision for the payment of conference fees was first made in the 1960 Regulations and it is evident that as yet there is no established practice in the courts as to when such fees should be allowed. We have given considerable thought to the difficult question of what should be regarded as a genuine conference for the purpose of the Regulations. In our view it would be wrong to draw a distinction between a conference in chambers and one elsewhere. At assizes, for example, there is sometimes no opportunity to hold a conference elsewhere than in the precincts of the court and while we recognise that not every discussion between counsel and solicitor in the court should rank as a conference, we consider that every case should be considered on its merits and that a general refusal to recognise any conference in court would be wrong. Our view is that where a conference is held, and is necessary, a conference fee should be allowed irrespective of where the conference was held.

39. We have not reached any firm conclusion as to the circumstances in which a conference should be regarded as "reasonably necessary". It appeared from the returns however that some taxing officers had allowed no conference fees in cases where we would have considered that *prima facie* a conference was essential, e.g. in murder cases.

40. We have not felt able to make a firm recommendation on the question whether, in cases where counsel only is assigned to the defence, under section 3(3) of the Poor Prisoners' Defence Act, 1930, a conference fee should be paid for an interview in the cells between counsel and the prisoner. It has been pointed out that in all such cases a conference with the prisoner in the cells is indispensable; it was suggested accordingly that a conference fee should always be allowed without question for this purpose. This view is not, however, shared by all members of the Working Party. Some of our members considered that a genuine conference can only take place between counsel and solicitor, and that while account should be taken of an interview between counsel and the prisoner for the purpose of assessing the brief fee, a separate conference fee should not be paid. The returns showed that some courts allowed a conference fee and some did not.



41. We recognise that it is desirable for an attempt to be made to define a conference, and the circumstances in which it is "reasonably necessary" to hold one, and for guidance in these matters to be given to the courts. We suggest that the Home Office and the Lord Chancellor's Department should consider this question further, after consultation with the legal profession and the courts.

42. *Work in giving Notice of Appeal, etc. (Regulation 6).* Regulation 6 provides that where a solicitor assigned under a defence certificate reasonably undertakes work "in giving notice of appeal or of application for leave to appeal or applying for a case to be stated and in matters preliminary thereto, being work done within the ordinary time for giving the notice or making the application for the case to be stated", he shall be paid additional sums in respect of the work, including, where counsel is also assigned, counsel's fee not exceeding £11 for his opinion, if any, in connection with the work.

43. The returns made by the courts showed no cases where payments had been made under Regulation 6. The intention of this Regulation, and of section 23(4) on which it is based, was to provide a means of paying for work done by solicitor or counsel between the time when a case is disposed of by the court of trial and that at which the appeal tribunal is seized of the matter. Its significance as part of the machinery for providing legal aid on appeal is wider than its relevance to the fair remuneration of barristers and solicitors, and we propose to deal with it more fully when we report on the working of the statutory provisions relating to legal aid on appeal.

## B. Legal Aid Certificates

44. Section 22(1) of the Legal Aid and Advice Act, 1949, provides that where a magistrates' court or examining justices grant a legal aid certificate the costs of the defence shall be assessed by The Law Society and paid out of the legal aid fund set up under Part I of the Act. (Before this provision was brought into operation, on 14th March, 1960, the costs were assessed by the court and paid out of local funds.) The fees and expenses payable to solicitors and counsel assigned under a legal aid certificate are prescribed by the Secretary of State in the Poor Prisoners' Defence (Legal Aid Certificate) Regulations, 1960. The functions of The Law Society in assessing and paying fees within the limits prescribed by the Regulations are undertaken by the appropriate Area Committees of the Society in accordance with a Scheme made by The Law Society with the approval of the Lord Chancellor and the concurrence of the Treasury, for the purposes of Part II of the Legal Aid and Advice Act, 1949 (the Legal Aid in Magistrates' Courts (Criminal Proceedings) Scheme, 1960).

### (1) THE POOR PRISONERS' DEFENCE (LEGAL AID CERTIFICATE) REGULATIONS, 1960

45. *Summary of Regulations.* The Regulations provide for the payment to solicitors of a basic fee of not less than £6. 6s. 0d. and not exceeding £47. 5s. 0d. Where counsel has been assigned under a legal aid certificate (under the Poor Prisoners' Defence Act, 1930, this is possible at present only in murder cases and then only if the justices think fit) the fees of both solicitor and counsel are at large. Where a case is not concluded on the day on which it started additional fees are payable in respect of each additional day during which the trial lasts. The Regulations include provisions similar to those in the Poor Prisoners' Defence (Defence Certificate) Regulations (see paragraphs 16 to 18 above) for the payment of increased fees where two or more defendants are represented; fees to counsel for a conference, advice in writing or an application to the court

for a case to stand out of the list; travelling and out-of-pocket expenses to solicitors; and an additional payment for work in giving notice of appeal. The Regulations also include an "escape clause" in the following terms:—

"If it appears to The Law Society in taxing or assessing, in accordance with subsection (1) of section 22 of the Legal Aid and Advice Act, 1949, the sums payable to a solicitor or counsel that for any reason including the exceptional length, difficulty or complexity of the case in respect of which the legal aid certificate was granted the sums payable by virtue of these Regulations or any of them would not provide fair remuneration according to the work actually and reasonably done, including in the case of a solicitor work done by counsel instructed by him in the circumstances mentioned in paragraph (3) of Regulation 1 of these Regulations, they shall certify accordingly and where they so certify any limitation contained in these Regulations or, as the case may be, such Regulation as is mentioned in the certificate, on the amount of any fee payable shall not apply, and The Law Society shall, after taking into account all the relevant circumstances of the case and having regard to the considerations mentioned in Regulation 4 of these Regulations allow such fees in respect of the work to which the certificate relates as appear to them to represent fair remuneration according to the work actually and reasonably done."

46. *Adequacy of prescribed fees.* The evidence which has been submitted to us does not suggest that the basic fees prescribed in the Regulations are inadequate. A statement of the average fees allowed to solicitors and counsel by the respective Area Committees during the year ended 30th September, 1961, is attached as Appendix 6, and these fees are analysed in Appendix 7. These figures show that in preliminary hearings before examining justices where counsel was not assigned, a basic fee in excess of the prescribed maximum of £47. 5s. 0d. was allowed in only some 3 per cent of the total number of cases, and that the corresponding figure in summary cases was only 0.3 per cent. We do not therefore recommend any alteration in the fees prescribed in Regulation 1(1).

47. *Conference fees.* As in the case of defence certificates, we recommend that Regulation 2(3) (a) should be amended to provide that where a conference fee is allowed to counsel, a standard fee of £2. 7s. 0d. should be paid for a conference lasting not more than half an hour. (See paragraph 23 above.)

48. *Employment of counsel.* Section 22(3) of the Legal Aid and Advice Act, 1949, provides that in cases where counsel is not assigned under a legal aid certificate, but the solicitor at his discretion employs counsel to appear at the hearing, the solicitor may be allowed payments in respect of the work done by counsel, provided that regulations may be made to secure that the total amount paid in such cases does not exceed that which would have been paid if counsel had not been employed. Effect has been given to this provision in Regulation 1(3). Under an interim agreement between the Council of The Law Society and the General Council of the Bar, the solicitor is responsible in such cases for the payment to counsel of a brief fee amounting to one-third of the basic fee allowed under Regulation 1 and a refresher fee amounting to two-thirds of the additional allowance for an adjourned hearing. This agreement has not prevented a higher proportion being paid in individual cases by agreement between the solicitor and counsel concerned.

49. The Bar Council consider that as a result of giving effect in Regulation 1(3) to the proviso to section 22(3) it is impossible for the solicitor and counsel to receive fair remuneration in such cases. Mr. Bolton has expressed the view that the wording of section 22(3) shows that it was recognised by Parliament that if the proviso to this section was given effect in the Regulations there would be a direct conflict with the general principle set out in section 21. He has argued

that the time has now come when the principle of fair remuneration should be adopted and that the solicitor should receive on behalf of himself and counsel briefed by him in the magistrates' court a fair fee for work actually and reasonably done by both, and has quoted the analogy of the Regulations governing legal aid in domestic cases in the magistrates' courts (Legal Aid (General) Regulations, 1962, S.I. No. 148).

50. The other members of the Working Party do not, however, consider that the limitation in Regulation 1(3) on the total amount which can be paid in such cases should be removed, or that there is conflict between this limitation and section 21 of the Act. As explained in paragraph 6 above, the latter section lays down the principle of allowing fair remuneration "according to the work actually and reasonably done". The question at issue is what work is reasonably done by counsel instead of by a solicitor. It was made clear at the time the Bill was before Parliament that no extra cost was to fall on public funds as a result of the provision in section 22(3). If it were to be accepted that the time has now come when a different principle should be adopted, and the counsel briefed in the magistrates' court in these circumstances should be paid a full fee out of public funds, and no reduction made in the payment to the solicitor, this would effect a fundamental change in the existing pattern of legal aid in magistrates' courts. A legal aid certificate, except in a case of murder, entitles the accused to the services of a solicitor only; if when a solicitor at his discretion briefs counsel the additional fees were to fall on public funds this would be, in effect, to make a legal aid certificate cover the services of counsel, and this, not at the discretion of the court, but at the discretion of the solicitor. We do not feel that we can comment on a proposal which would effect such a change.

51. We are all agreed, however, that it is desirable that consideration should be given to the question whether the Poor Prisoners' Defence Act, 1930, should be amended to allow counsel to be assigned under a legal aid certificate in cases other than murder where, owing to the nature of the case, the proper conduct of the proceedings requires the services of counsel.

## (2) TAXATION AND ASSESSMENT BY THE AREA COMMITTEES

52. The Legal Aid in Magistrates' Courts (Criminal Proceedings) Scheme, 1960, provides for the solicitor assigned under a legal aid certificate to lodge with the appropriate Area Committee such papers and information as will enable that Committee to tax or assess remuneration. The documents are to include a bill of costs, setting out a summary in narrative form of the work done and specifying the fees and disbursements claimed; counsel's brief, and where counsel is assigned, his fee note; vouchers or receipts for out-of-pocket expenses; a copy of the legal aid certificate and, where costs for work done in the same case under a defence certificate have already been determined, details of the work for which payment has been made and the amount allowed.

53. Where an Area Committee assesses a solicitor's costs at a figure less than that charged in the solicitor's bill, the solicitor may make representations to the Committee and, if still dissatisfied with the decision of the Area Committee, he may, with the leave of the Committee, seek a review of their decision by the Council of The Law Society. Where an application is made to the Council for such a review the solicitor may make such written representations in support of his application as he considers necessary, and the Area Committee are required to provide for the information of the Council their reasons for reducing the solicitor's bill, or, in appropriate cases, their reasons for refusing to invoke the provisions of the "escape clause" and to allow costs in excess of those prescribed by the Regulations.

54. As we have explained, the courts and their officers have no responsibility for the taxation and assessment of costs under a legal aid certificate; this is the function of The Law Society. We understand from The Law Society that in general the existing machinery for taxation and assessment is working smoothly. It appears from the figures given in Appendix 7 that there may be some variation in standards of assessment between the different Area Committees. However, the small number of appeals to The Law Society from assessments by the Area Committee (particulars of which are given in Appendix 8) suggests that in general the amounts allowed are accepted as adequate by those concerned. The average amount, excluding disbursements, paid to solicitors in summary trials was £15. 1s. 0d. and the corresponding figure for preliminary hearings (other than cases where counsel was assigned) was £23. 3s. 0d. (see Appendix 6). No effective comparison can be made between the fees paid under a legal aid certificate and those paid under a defence certificate, as the figures furnished by The Law Society have been compiled on a different basis from those furnished by the courts; moreover, the fees paid to a solicitor assigned under a legal aid certificate cover not only the work involved in the preparation of the defence but also (except in murder cases) the work of advocacy.

55. We understand that, in the case of preliminary hearings, because of the time factor and the necessity for the solicitor to retain his papers until after the trial, it is not normally practicable for Area Committees to assess costs under a legal aid certificate until after the completion of the trial. The solicitor is, however, required to submit to the Area Committee particulars of the costs received under the defence certificate and, as we have stated above, we consider that the risk of duplication of payments is slight.

## PART II

### (1) MISCELLANEOUS QUESTIONS

56. Although, as we have already stated, we have been mainly concerned with the Regulations governing the remuneration of barristers and solicitors, we feel it desirable to mention, in paragraphs 57 to 66 a number of other matters to which our attention has been drawn.

57. *Defences under section 3(3) of the Poor Prisoners' Defence Act, 1930.* In his remarks on the grant of legal aid, reproduced in Appendix A of Home Office Circular No. 90/1961 (see Appendix 1) the Lord Chief Justice stated that the power to assign counsel only, under section 3(3) of the Poor Prisoners' Defence Act, 1930, is to be regarded as in the nature of an emergency power, intended only for cases where the prisoner has never applied for a defence certificate at all or has applied and either has been refused or his application has been made too late for it to be dealt with in advance of the trial. The returns furnished by the courts showed that counsel only had been assigned in 428 cases, i.e. in 24 per cent of the cases covered by the returns. In a few courts the percentage was between 80 per cent and 100 per cent. We have been informed that it is still the practice in some courts to deal with applications for defence certificates by neither granting nor refusing a defence certificate but by assigning counsel only under section 3(3) as an alternative. The Lord Chief Justice's statement makes it clear that this practice is not in accordance with the terms of the Poor Prisoners' Defence Act, 1930.

58. *"Open" quarter sessions.* We understand that at some "open" quarter sessions where solicitors have a right to audience, it is the practice, when a defence certificate is granted, to authorise the services of a solicitor only. While this practice is permissible in the case of an appeal aid certificate, by virtue of the proviso to section 2(4) of the Summary Jurisdiction (Appeals) Act, 1933, we can find no statutory authority for it in the case of a defence certificate. Section 1(1) of the Poor Prisoners' Defence Act, 1930, provides that "any person

committed for trial for an indictable offence shall be entitled to free legal aid in the preparation and conduct of his defence at the trial and to have solicitor and counsel assigned to him for that purpose in the prescribed manner, if a certificate (in this Act referred to as a "defence certificate") is granted in respect of him . . . ". A person to whom a defence certificate is granted may be satisfied with the services of a solicitor only, where the solicitor has a right of audience. He is nevertheless entitled under the certificate to have the services of both a solicitor and counsel and should be so informed.

59. *Grant of legal aid by justices.* We are informed that there continues to be reluctance on the part of some justices to grant legal aid at all for summary or committal proceedings, or to grant legal aid where it is likely that a plea of guilty will be tendered at the trial, contrary to the guidance given by the Lord Chief Justice in the remarks reproduced in Appendix A to Home Office Circular No. 90/1961. We observe that subsections (2), (4), (5) and (6) of section 18 of the Legal Aid and Advice Act, 1949, the purpose of which is to remove some of the restrictive words in section 2 of the Poor Prisoners' Defence Act, 1930, and to remove certain doubts, have not yet come into force. In our view it is desirable that these provisions should be brought into operation as soon as possible, thus completing the statutory scheme envisaged by the Legal Aid and Advice Act, 1949.

60. *Expenses of defence witnesses.* Section 23(3) of the Legal Aid and Advice Act, 1949, provides that where legal aid is granted in respect of proceedings for an indictable offence, the costs directed to be paid out of local funds by virtue of the Poor Prisoners' Defence Act, 1930, shall not include allowances to witnesses; an order for the payment of such allowances may, however, be made under the Costs in Criminal Cases Act, 1952. We are informed that some courts have expressed the view that a witness called for the defence may be allowed his expenses out of local funds only if the accused is acquitted, and a number of cases have been brought to notice where a taxing officer has refused to allow the expenses of such a witness. This is a most unsatisfactory position. In our view it is reasonable that witnesses necessary to the defence should receive payment under the Witnesses' Allowances Regulations, irrespective of the outcome of a case. It appears to us that sections 1 and 5 of the Act of 1952 empower the courts to order such payments whether or not the defendant was acquitted: if our view is incorrect, however, we suggest that amending legislation is required.

61. *Fees of expert witnesses.* Regulation 3 of the Witnesses' Allowances Regulations, 1955, provides that "there may be allowed in respect of an expert witness for attending to give expert evidence and for work in connection with its preparation an expert witness allowance of such amount as the court may consider reasonable having regard to the nature and difficulty of the case and the work necessarily involved". This provision is giving rise to difficulties in practice as a solicitor acting under a defence certificate is unable to agree in advance a fee which can be paid to an expert witness. Similar difficulties do not arise in the case of civil legal aid because it is provided in Regulation 15 of the Legal Aid (General) Regulations, 1962, that The Law Society may give general authority to solicitors acting for assisted persons in any particular class of case to obtain experts' reports or opinions or tender expert evidence; The Law Society state the fee to be paid for such expert assistance, and where prior approval has been given the fee cannot be altered on taxation. There is no analogous procedure in criminal proceedings whereby the solicitor is able to obtain prior authority as to the amount of the fee for which he may contract for the services of an expert witness, or as to the amount of any other unusual expense which he may necessarily have to incur. Consequently, the situation sometimes arises that the fee charged by the expert witness is substantially reduced by the taxing officer. This has resulted in disputes between the solicitor

and the witness concerned, with the witness taking the view that the solicitor is personally liable for the payment of his fee. As in most cases the fees of an expert witness have to be agreed beforehand, the witness and the solicitor may reach agreement by adopting the standard of what would ordinarily be allowed by a taxing master in a civil case, but we are informed that taxing officers in criminal cases often do not accept this standard. We are informed that as a result of these difficulties, there have been cases in which reputable experts have been unwilling to make their services available for the defence of accused persons in legally aided cases.

62. We suggest that some procedure is necessary whereby prior authority may be obtained as to the amount at which an expert witness may be engaged, or other unusual expense incurred. Any person giving such authority will clearly require to have an up-to-date knowledge of the current "market rate" of the fees charged by expert or professional witnesses.

63. *Subpoenas.* Certain taxing officers take the view that they cannot authorise payment to a solicitor of any expenses incurred in the service of a subpoena upon a witness, including conduct money paid to the witness to ensure his attendance at court. This causes difficulty. There appears to be no reason why such expenses, other than conduct money, should be treated differently from other out-of-pocket expenses reasonably incurred by a solicitor in the defence of a poor person, and we understand it was intended that the expense of serving a subpoena, where reasonable, should be covered by the Regulations. The principal difficulty occurs over conduct money. Refusal to reimburse a solicitor for any conduct money he has paid to a witness is no doubt based on the provision in section 23(3) of the Legal Aid and Advice Act, 1949, that costs directed to be paid out of local funds by virtue of the Poor Prisoners' Defence Act, 1930, shall not include allowances to witnesses. Moreover, at the time the court taxes the amount due to a solicitor assigned to give legal aid, the defence witnesses in the case may have already received from the court the full allowance to which they are entitled under the Witnesses' Allowances Regulations. It is the normal practice for witnesses' allowances to be paid immediately at the end of the proceedings, and as the appropriate officer will often be unaware at that stage that a witness has already received conduct money from the defence solicitor no deduction may be made in respect of it when the witness's allowance is paid. We suggest that solicitors should inform the clerk of the court, before the proceedings, of any cases where conduct money has been paid, in order that an appropriate adjustment may be made to the witness's allowance. We also suggest that a solicitor might be regarded as acting as the agent of the court when he pays out conduct money to a witness and that there should be no objection to the court reimbursing him, in this capacity, for sums paid to witnesses. It should be borne in mind however that whereas payments out of local funds under the Poor Prisoners' Defence Act, 1930, are repaid by the Exchequer, amounts paid out of local funds in respect of witnesses' expenses are not so reimbursable, and if the procedure suggested above is followed the necessary accounting adjustments would have to be made.

64. *Mileage allowance.* We understand from The Law Society that there is a wide variation of view as to the rate of mileage allowance which should be paid to a solicitor who necessarily and properly incurs travelling expenses, and that whereas in some cases the allowance is confined to the bare cost of using a car, in others allowance is also made for the time spent in travelling. It seems reasonable that a solicitor who is travelling in the course of his professional work should be entitled to remuneration for time properly and reasonably spent in travelling on a case, and that if the mileage allowance does not allow for such an element account should be taken of it in fixing the solicitor's basic fee.

65. *Subsistence expenses.* We have been asked to consider whether a solicitor assigned under a defence certificate should be granted a subsistence allowance in respect of his attendance at court. Regulation 1(3) (b) appears to provide sufficient authority to enable a taxing officer to allow subsistence expenses, where he considers them properly chargeable and justifiable. In general, it would appear that in cases at city and borough quarter sessions the circumstances would rarely justify the payment of subsistence expenses, and we take the view that such expenses should not be allowed to a solicitor or his clerk attending the hearing of proceedings in his local court. Where, however, a journey is involved, and the solicitor or clerk is absent from his office for a considerable period, we think that some allowance might properly be made for subsistence during the period of absence.

66. *Standardisation of forms*

(a) Of the forms used by courts for the purposes of legal aid, the principal form which has not been standardised is the order for payment on local authority treasurers made by courts of assize and quarter sessions under section 8(1) of the Costs in Criminal Cases Act, 1952, and section 2(5) of the Summary Jurisdiction (Appeals) Act, 1933. At present the forms which clerks of assize and clerks of the peace use for this purpose vary considerably. In order to avoid confusion over claims for reimbursement by local authorities and to facilitate the audit of such claims, it would be useful if courts were to adopt a standard form of order.

(b) In order to assist the Area Committees of The Law Society in the taxing and assessment of payments to be made to solicitors and counsel in respect of work done under a legal aid certificate, clerks to justices were asked, in Home Office Circular No. 34/1960, to supply to solicitors assigned under a legal aid certificate a copy of the certificate and a written statement indicating that the solicitor concerned was assigned to the defence under the certificate. We are informed that many clerks to justices have omitted to furnish this statement, and we accordingly recommend that the statement should be incorporated in the legal aid certificate, as has already been done in the case of civil aid certificates.

(2) EXISTING MACHINERY FOR TAXATION AND ASSESSMENT

67. As is made clear in the earlier part of our Report, the machinery for the taxation and assessment of the fees to be paid to counsel and solicitors, and hence the operation of the Regulations which we have been considering, differs according to whether the case is dealt with in the magistrates' courts or at quarter sessions or assizes.

68. In the magistrates' courts this duty is in the hands of The Law Society; in the superior courts it remains a function of the court and is the responsibility of the clerk of assize or the clerk of the peace. This situation was brought about by sections 22 and 23 of the Legal Aid and Advice Act, 1949, which made no change in the machinery for taxation and assessment in the superior courts, but which, in section 22(1) transferred this function in respect of cases in the magistrates' courts to The Law Society. The then Attorney-General in introducing the clause in Committee on 31st March, 1949, said:

"The rather complicated looking Clause provides for costs before the courts of summary jurisdiction and the examining magistrates to be taxed by The Law Society and paid out of the Legal Aid Fund. If the matter had been left to the clerks to the justices, who have no special experience in the matter of taxation of costs, and there had been no regulations controlling the maxima to be paid in these cases, there would have been no kind of uniformity of the sort that, as the hon. and learned Member for Daventry (Mr. Manningham-Buller) emphasised on the last Clause, is so desirable, and all sorts of anomalies would have arisen."

69. It is clear to us that the duty of assessing the work done by the defence, particularly by a solicitor, is an arduous one, and lays a considerable burden on clerks of assize and clerks of the peace. It is true that it is a duty which they have carried out for many years, and that they also assess the amounts to be paid from local funds to the prosecution. For some years prior to 1960, however, the maximum amounts which could be paid to solicitor and counsel for the defence made any serious assessment unnecessary, since the maximum amount which could be paid was so low as to be the norm.

70. It has been represented to us by The Law Society that difficulties arise over the application of the Poor Prisoners' Defence (Defence Certificate) Regulations because (a) the conditions under which clerks of assize and some clerks of the peace have to assess and fix the payments are such as to make it difficult for them to implement the suggestion in the Home Office Circular of 17th May, 1961, that the Act envisaged that an individual assessment of the work done by solicitor and counsel should be made in each case, and (b) the number of assessing officers (about 150) means that different interpretations of the Regulations are given in different parts of the country. The Law Society have made the point that not all clerks of assize or clerks of the peace have the same degree of knowledge of present-day costs of conducting a solicitor's business, and hence of what is fair and reasonable remuneration for the solicitor's carrying out his functions under the defence certificate.

71. The representatives of The Law Society have suggested that if the duty of taxing and assessing fees of counsel and solicitors at assizes and quarter sessions, as well as in the magistrates' courts, were to become a function of The Law Society, the difficulties would be overcome, since the work would be carried out by Area Committees on documentary evidence and a common standard would be imposed by the supervising authority of The Law Society. Other members of the Working Party do not accept this argument, certain of them taking the view that taxation at assizes and quarter sessions is better carried out under the responsibility of someone who has been in court during the proceedings. We do not regard it as within our functions to make any recommendation on this point, but the question is one which merits further consideration. On the basis of the present system, however, we suggest attention should be given to the following points: (a) the staffing of the courts should be examined in the light of the recommendations in this Report in order to ascertain whether any increase is necessary for the proper performance of the duties of taxation and assessment; (b) the method by which a solicitor makes known to the taxing authority the work which he has done; (c) the system of appeal from an assessment by the clerk of assize or clerk of the peace.

72. On (b) we attach a suggested outline of advice to solicitors (Appendix 9), based on that given by The Law Society to solicitors who act under legal aid certificates. We think that guidance on these lines should be given to solicitors acting under defence certificates and that it should be brought to the notice of all clerks of assize and clerks of the peace, with a recommendation that the suggested procedure should be adopted. We also attach a precedent for a bill of costs (Appendix 10). We realise that it would not be necessary to lodge a bill in this form in all cases and that a shorter form of bill on the lines of that set out in Appendix 11 would be adequate in the majority of cases.

73. On (c) we have considered Regulation 7 of the Poor Prisoners' Defence (Defence Certificate) Regulations, which allows solicitor or counsel assigned under a defence certificate to make written representations to the presiding Judge as regards any sum allowed, or as regards any refusal to grant a certificate under Regulation 5 (the "escape clause") but does not give him a right to make oral representations. While this Regulation does furnish counsel or solicitor,



who is dissatisfied, with a form of appeal, it does not ensure consistency in the interpretation of Regulations because there are many courts and presiding Judges, and it is obviously open to different presiding Judges to adopt different methods of considering representations made under the Regulation. It is unlikely that under this system a consistent body of doctrine on the interpretation of the Regulations would emerge. We have been informed that some presiding Judges regard the consideration of such representations, particularly as regards solicitors' fees, as a difficult, and, in some respects unwelcome, duty.

74. The problem is a complex one, and before any firm recommendation could be made, further study of the machinery which would be necessary and the issues involved would have to be undertaken. We think, however, that consideration should be given to the possibility of providing special machinery to deal with appeals against assessments or, of course, against particular interpretations of the Regulations, on the lines of the arrangements made for appeals against the taxation in civil cases under Rule 35 of the Supreme Court Costs Rules, 1959.

### (3) GENERAL OBSERVATIONS

75. In concluding this part of our Report we think that we may justifiably make two more general comments. Although, as we have made clear, we have not been concerned with questions of the structure and operation of the system of legal aid in the criminal courts in England and Wales in the widest sense, we are the first official body to have made a detailed examination of the operation of some parts of that system since the Rushcliffe Committee reported in the very different circumstances of 1944-5. Our first comment is that the statutory basis for legal aid in the criminal courts has now become excessively complicated and rests upon a number of Acts whose relationship to one another is not always clear. In order to discover the relevant statutory authority it is necessary to examine provisions dealing with legal aid in the Poor Prisoners' Defence Act, 1930, the Criminal Justice Act, 1948, and the Costs in Criminal Cases Act, 1952, as well as in the Legal Aid and Advice Act, 1949; and legal aid in appeals is dealt with in the Criminal Appeal Act, 1907, the Summary Jurisdiction (Appeals) Act, 1933, and the Administration of Justice Act, 1960. We think there is an urgent need for these provisions to be consolidated. Our second comment is that there may well be a case for something more than consolidation of the existing provisions. If new legislation were in contemplation, it would be opportune to examine on a rather wider basis, a number of points in the existing system, some of which we have discussed above. The system of taxation and assessment of fees and payments is one; the types of case in magistrates' courts in which counsel can be assigned under a legal aid certificate is another. Other points which have been mentioned to us are the procedure laid down in the Poor Prisoners' (Counsel and Solicitor) Rules, 1931, for the maintenance by the courts of lists of solicitors and barristers willing to act for "poor prisoners" and the assignment by the court, subject to any representations from the accused, of a solicitor from the list; and the question of the continued existence of the "dock brief" side by side with the statutory system of legal aid. We think there is a case for such examination. The years since the Rushcliffe Committee's Report in 1945 have seen a number of substantial changes in the process of criminal trial; and the Criminal Justice Administration Act, 1962, and the implementation of the Report of the Interdepartmental Committee on the Business of the Criminal Courts (Cmd. 1289) will introduce still more. The procedure for providing legal aid in cases in which the interests of justice require it, and in which the accused cannot be expected to provide it for himself, must obviously be looked at from time to time in the light of developments elsewhere in the field of criminal procedure and trial.

76. (1) In our Report we have concentrated our attention on the Poor Prisoners' Defence (Defence Certificate) Regulations and the Poor Prisoners' Defence (Legal Aid Certificate) Regulations. We intend to deal separately with the Appeal Aid Certificate Rules and the Criminal Appeal (Fees and Expenses) Regulations.
- (2) We do not recommend any changes in the maximum and minimum brief fees for counsel, and the maximum and minimum basic fees for solicitors, prescribed in the Regulations (paragraphs 19 and 46).
- (3) Regulation 4 of the Poor Prisoners' Defence (Defence Certificate) Regulations should be amended to include work done on a second indictment or a retrial among the matters to be taken into account in determining the sums to be paid to counsel and solicitors (paragraphs 20-21).
- (4) Regulation 5 should be amended to enable the "escape clause" to be used to award counsel for the defence refresher fees in excess of fifty per cent where necessary to preserve the principle of fair comparison with the remuneration of prosecution counsel (paragraph 22).
- (5) Regulation 2(3)(a) of the Poor Prisoners' Defence (Defence Certificate) Regulations and Regulation 2(3) (a) of the Poor Prisoners' Defence (Legal Aid Certificate) Regulations should be amended to provide that in criminal proceedings where a single counsel is assigned, a standard fee of £2. 7s. 0d. should be paid for a conference lasting not more than half an hour (paragraphs 23 and 47).
- (6) It is desirable to achieve a higher standard of uniformity of practice in the application of the Regulations than at present (paragraph 30).
- (7) The basic principle of assessment must be that fair and reasonable remuneration is allowed according to the work actually and reasonably done. The figures which we collected, which relate to a period before the issue of the Home Office Circular in May, 1961, led us to conclude that in many cases fair and reasonable remuneration was not being paid; and we had information that in some courts the position had not changed. Proper assessment necessarily involves giving the defending solicitor an opportunity to show the work done in an individual case, and considering the work done by counsel and solicitor on its merits. In assessing defence solicitors' fees, regard should be had to the factors mentioned in Regulation 4 of the Poor Prisoners' Defence (Defence Certificate) Regulations, the time spent both in preparing the case and in attendance at court, and the general level of remuneration of solicitors (paragraphs 26-32 and Appendix 1).
- (8) The fees of counsel assigned to the defence should be correlated with those of counsel for the prosecution following the principles laid down by the Lord Chief Justice and set out in the second Appendix of Home Office Circular No. 90/1961 (paragraph 32 and Appendix 1).

- (9) It should be made clear, if necessary by amendment of the Regulations, that counsel for the defence is entitled to an additional fee for an application to the court for a case to stand out of the list, not only where the application is by the defence but also when he appears at the hearing of an application by the prosecution (paragraph 37).
- (10) An attempt should be made to define a conference and the circumstances in which it is "reasonably necessary" to hold one and guidance on this question should be given to the courts. Where a conference is held, and is necessary, a conference fee should be allowed irrespective of where the conference was held (paragraphs 38-41).
- (11) We recommend that consideration should be given to the question whether the Poor Prisoners' Defence Act, 1930, should be amended to allow counsel to be assigned under a legal aid certificate in cases other than murder where, owing to the nature of the case, the proper conduct of the proceedings requires the services of counsel (paragraphs 49-51).
- (12) The machinery for the taxation and assessment of costs under a legal aid certificate by The Law Society appears to be working satisfactorily (paragraph 54).
- (13) In some courts it is still the practice to deal with applications for defence certificates by assigning counsel only, under section 3(3) of the Poor Prisoners' Defence Act, 1930, although this is not in accordance with the terms of the Act (paragraph 57).
- (14) It is the practice at some "open" quarter sessions where solicitors have a right of audience, to authorise the services of a solicitor only, when a defence certificate is granted; the Poor Prisoners' Defence Act, 1930, gives a person in whose favour a certificate has been granted the right to counsel as well as a solicitor (paragraph 58).
- (15) Some justices appear unduly reluctant to grant legal aid. The remaining provisions of section 18 of the Legal Aid and Advice Act should be brought into operation as soon as possible (paragraph 59).
- (16) Witnesses necessary to the defence should be entitled to payment under the Witnesses' Allowances Regulations, irrespective of whether the accused was acquitted or convicted (paragraph 60).
- (17) A procedure is necessary whereby a solicitor may obtain prior authority as to the amount at which an expert witness may be engaged for the defence or other unusual expense incurred (paragraphs 61-62).
- (18) A solicitor should inform the clerk to the court, before the proceedings, of any case where conduct money has been paid to a witness so that such a sum can be deducted from the witness's allowance and paid over to the solicitor; he should be reimbursed under the Regulations for any expenses reasonably incurred in the service of a subpoena upon a witness (paragraph 63).
- (19) A legal aid certificate should incorporate a statement by the clerk to justices, indicating that the solicitor concerned was assigned to the defence under the certificate (paragraph 66).

- (20) The Law Society have expressed the view that assessment and taxation of fees in the superior courts should be undertaken by them, as in the magistrates' courts. Other members of the Working Party do not accept this view. We do not regard it as our function to make any recommendation on this point but the question is one which merits further consideration. Meanwhile, on the basis of the continuation of the present system:
- (a) The staffing of the courts should be examined in the light of our recommendations (paragraph 71).
  - (b) Guidance should be issued to solicitors as to the procedure for stating the work done in a case, and courts should be advised to accept this procedure (paragraph 72).
  - (c) Consideration should be given to the provision of special machinery to deal with appeals against assessment, similar to that in force in civil cases (paragraphs 73-74).
- (21) The existing statutory provisions dealing with legal aid should be consolidated, and a number of points in the existing system should be examined on a wider basis (paragraph 75).

77. We should like to express our grateful thanks to our Secretary, Mr. M. L. Priss and to Miss White of the Home Office for their unfailing assistance in our deliberations, and in the preparation of material for us to consider. We should also like to thank Mr. R. P. Flanders of The Law Society who has taken part in our discussions and has helped us in many ways.

R. R. PITTAM, *Chairman*  
H. BOGGIS-ROLFE  
SPOULE BOLTON  
C. L. BURGESS  
W. O. CARTER  
E. J. T. MATTHEWS  
R. LANCASTER  
P. M. VINE

M. L. PRISS, *Secretary*  
27th April, 1962

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## APPENDICES

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Any communication on the subject of  
this letter should be addressed to:  
THE UNDER SECRETARY OF STATE,  
and the following number quoted:  
H.O. 90/1961  
C.2

HOME OFFICE,  
WHITEHALL,  
LONDON, S.W.1  
17th May, 1961

Sir,

## HOME OFFICE CIRCULAR No. 90/1961

### Legal Aid in Criminal Cases

1. I am directed by the Secretary of State to refer to Home Office Circulars Nos. 33, 34 and 35/1960, and to say that while the Working Party referred to in those circulars has not yet completed its task, it has received much information about the working of the scheme for legal aid in criminal cases, under the Regulations which came into operation on 14th March, 1960, and the Secretary of State thinks that it may be of assistance to Clerks of Assize, Clerks of the Peace and Clerks to Justices if some of this material is brought to their attention at this stage.

2. The Lord Chief Justice has agreed that, in addition to the information which has been received by the Working Party about practice in the courts, some remarks about the grant of legal aid which he made to a meeting of magistrates, and part of a note about the assessment of counsel's fees which he addressed to the Judges, may be reproduced in this circular.

### APPLICATIONS FOR, AND THE GRANT OR REFUSAL OF, LEGAL AID

3. A copy is attached at Appendix A of the remarks of the Lord Chief Justice, in addressing a meeting of magistrates, on the subject of applications for, and the grant or refusal of, legal aid.

### TAXATION AND ASSESSMENT OF FEES

4. Section 21 of the Legal Aid and Advice Act, 1949, provides that the Secretary of State in making Regulations, and any person by whom the amounts payable are determined in a particular case, shall have regard to the principle of allowing fair remuneration according to the work actually and reasonably done. There is no provision corresponding to paragraphs 1 and 2 of the Third Schedule of the Legal Aid and Advice Act, 1949, which limit the sums payable to counsel and solicitors in civil legal aid cases in the High Court to the prescribed proportion of the taxed costs. The operation of section 21 necessarily involves the consideration on its merits of the actual work done by counsel or solicitor in each case; and, while it is recognised that taxing officers must necessarily formulate some general standards to guide them, within the ambit of the Regulations, the information before the Secretary of State indicates that the view generally taken by the courts has been that it is not in accordance with the spirit of the section for rules of practice to be automatically applied without regard to the facts of a particular case—as, for example, a rule that the defence of a person pleading guilty is paid at the minimum fee; that the defence should in no circumstances be paid more than the prosecution; that a solicitor should in no case receive a higher fee than counsel; or that a conference fee should never be paid to counsel unless there had been a conference at his chambers or in some place other than the precincts of the court.

5. With a view to securing reasonable uniformity on the assessment of counsel's fees where application is made to the Judge, and a proper relationship between the fees paid to prosecuting counsel and those paid to counsel assigned to the defence, the Lord Chief Justice set out, in a note to the Judges, certain principles which in his view should be followed, and with which, it is understood, the other Judges agree. The relevant extract from this note is reproduced in Appendix B, for the information of officers of the courts concerned with taxing and assessing counsel's fees.

6. The Lord Chief Justice has agreed that it should be pointed out that his observations regarding the correlation of prosecution and defence costs apply only to counsel's fees. It would not be right to apply the same principle to the costs of a prosecuting solicitor and the costs of a solicitor instructed for the defence. In many cases the costs of the defence are likely to be greater than those allowed to the prosecution, since

- (a) much of the preparatory work for the prosecution is carried out by the police, whereas the whole of the preparatory work and investigation which has to be done on behalf of the defence falls upon the solicitor acting for the defence; and
- (b) the prosecuting solicitor may be a salaried employee of the prosecuting authority, and as such his costs may not be assessed upon the same basis as those of the defence solicitor.

7. The basic principle must be that fair and reasonable remuneration according to the work actually and reasonably done should be allowed, and it follows that the defending solicitor should be given an opportunity to show the amount of work involved in each individual case. Only then will it be possible to assess the remuneration which should be paid for that work. Where the work which the defence solicitor is required to do exceeds that required of the solicitor for the prosecution, as will often be the case, it is right that a higher fee should be paid.

8. The Secretary of State recognises that the scrutiny of the summarised bill may involve certain difficulties, but the Act envisages that an individual assessment of the work done by solicitor and counsel should be made in each case. Taxing officers may be interested to know that, before the new scheme came into operation, the Clerk of the Peace for the County of London asked all solicitors on the Poor Persons Defence List at the County of London Sessions to ensure that counsel's brief, duly endorsed, was handed in at the conclusion of each case with a statement by the solicitor acting under the defence certificate or appeal aid certificate, giving all particulars necessary to enable the court to mark the fees due to solicitor and counsel in respect of that particular case, including the solicitor's disbursements. He also asked that any application in respect of fees under Regulation 6 of the Defence Certificate Regulations or Rule 7 of the Appeal Aid Certificate Rules should be made not later than the time fixed for giving notice of appeal or making application for a case to be stated. The Secretary of State understands that these arrangements, which were designed to avoid delay in the payment of fees and disbursements, have been found to work satisfactorily in practice.

#### INTERPRETATION OF THE REGULATIONS

9. The Secretary of State recognises that the interpretation of the Regulations is a matter for the courts and not for the Home Office or the Working Party. It may, however, be of assistance to courts to be aware of certain information which has come to the notice of the Working Party as to the practice in other courts on several points which may have caused difficulty.

- (a) The Lord Chief Justice has expressed his agreement with the view that Regulation 6 of the Defence Certificate Regulations allows payment to be made, in appropriate cases, where, as a result of advice, no appeal is entered or application for leave to appeal made.
- (b) The question has been raised whether Regulation 3 of the Defence Certificate Regulations, which deals with cases in which more than one person is charged in the same indictment, and the same solicitor or counsel acts for two or more of the defendants, can be read as giving the court an unfettered discretion to decide whether or not to allow some increase to the fee determined for the first person indicted in respect of the second or subsequent defendants. Courts consulted by the Working Party have indicated that their practice is based on the view that the intention of the Regulation is that the court should allow some increase for each defendant, although the amount within the maxima prescribed is at discretion.
- (c) It has been suggested that the element of "waiting time" in Regulation 4 of the Defence Certificate Regulations cannot be taken into account in assessing counsel's fee where he has been assigned under section 3(3) of the Poor Prisoners' Defence Act, 1930. Courts consulted by the Working Party have indicated that they make no distinction in principle between these cases and those in which counsel is acting under a defence certificate.
- (d) It had been reported that in one or two courts the taxing officer has felt unable to settle payment under a defence certificate until payment under a legal aid certificate granted in the same case has been determined. The information received on this point is that courts generally have not held this to be a requirement of Regulation 4(3) of the Defence Certificate Regulations, and that they have taken the view that whichever certificate is the first to be settled for payment, the appropriate officer settling payment for the second should take account of what has already been paid.

10. The Secretary of State wishes to take this opportunity of thanking all officers of courts who supplied material in answer to the questionnaire sent out with Home Office Circular No. 162/1960. He is confident that he can rely on them for similar assistance if the Working Party should later find it necessary to ask for any further information about the working of the legal aid scheme in the criminal courts. Meanwhile, he would be glad to receive, for transmission to the Working Party, information about any difficulties which may have been encountered and how they are being resolved, and about any other points which may be thought suitable for the Working Party's consideration.

11. An additional copy of this circular is enclosed for the convenience of the court.

I am, Sir,

Your obedient Servant,

R. R. PITTAM

*The Clerk of Assize*  
*The Clerk of the Peace*  
*The Clerk to the Justices*

CRI 145/5/9



Extract from an address by the Rt. Hon. Lord Parker of Waddington,  
 Lord Chief Justice, to a meeting of Magistrates

"I want to say a word or two about the grant of legal aid in cases of indictable offences by committing Magistrates and by Quarter Sessions.

There are of course occasions when a prisoner can conduct his defence or make a plea in mitigation more effectively in person and without legal representation.

But such a case is of course rare. In almost every case the interests of the prisoner can only be safeguarded by legal representation and, as you know, subject to a means qualification, he is entitled to it by virtue of the Poor Prisoners' Defence Act, 1930, and the Legal Aid and Advice Act, 1949. Thus a defence certificate may be granted by committing justices or by Quarter Sessions wherever it is desirable in the interests of justice that he should have legal aid in the preparation and conduct of his defence at the trial, which includes proceedings on the question of the sentence to be passed or order to be made. Such a defence certificate entitles him to have the services of solicitor and counsel. There is also power at the trial for Quarter Sessions to assign him counsel only to conduct his defence or plea. It is, however, I think, clear from a reading of the statute that this latter power, to assign counsel only, is intended only for cases where the prisoner has never applied for a defence certificate at all or has applied and either has been refused or his application has been made too late for it to be dealt with in advance of the trial.

Notwithstanding this, it has become the practice for some courts either not to deal with applications in advance or to refuse them, saying in effect "We can always, if it is found desirable, assign counsel only at the trial itself". Indeed some Chairmen of Quarter Sessions have been going so far as to suggest that committing justices should exercise restraint in granting defence certificates leaving it to the court to decide—bearing in mind the power in the court to assign counsel only at the trial. It is said that this makes for economy—having counsel only and not solicitor and counsel.

I am quite clear, however, that any such suggestion is quite wrong—it is contrary to the spirit of the Act and indeed to make use of the power to grant counsel only is in such circumstances *ultra vires*. Please do not think that I am directing these remarks against any of you—I do not know what your practice is—but I merely feel it right to state what I consider to be the proper practice. If the application is made to the committing justices, it is for them to exercise their discretion in the matter and not leave it to the trial court to decide whether to grant a certificate. Similarly if the application is made to the court the court must exercise its discretion in the matter and not leave it over to the trial, unless of course the application is made so late that it cannot be dealt with before the trial. In other words, the power to assign counsel only is to be regarded as in the nature of an emergency power alone.

Further, in the exercise of discretion it must be remembered that since the Legal Aid and Advice Act, 1949 (section 18) if there is any doubt whether it is desirable in the interests of justice that a prisoner should have legal aid, that doubt is to be resolved in favour of the prisoner.

One further matter on discretion. It is sometimes said that in the case of prisoners who are going to plead guilty there must be but few cases where it is desirable in the interests of justice that he should have legal aid. With that I am afraid that I entirely disagree. I would myself put it the other way round and say that even in the case of pleas of guilty there will seldom be a case where it is not desirable in the interests of justice. Speaking for myself, I often get the feeling on the first day of Assizes when pleas are taken, that I am not getting all the help that I need in order to sentence the prisoner. I welcome a case in which there has been a full opportunity for solicitor and counsel to get to know and so be able to present the prisoner's background and character."

Extract from Note on the Assessment of fees for counsel under the  
 Poor Prisoners' Defence (Defence Certificate) Regulations, 1960,  
 circulated to the Judges by the Rt. Hon. Lord Parker of Waddington,  
 Lord Chief Justice

As I see it there will generally be little difficulty in determining whether in any particular case the length, complexity or difficulty of the case, etc. justifies a certificate being given under Regulation 5. The real difficulty I think is to produce some degree of uniformity as to what is the appropriate fee representing fair remuneration according to the work actually and reasonably done if such a certificate is granted.

Each case must of course depend upon the exact circumstances and only the Judge who has tried the case is competent to determine the matter. I think, however, that we should all try and approach the cases with the same considerations in mind and in the hope of securing agreement on this, I am setting out below my general views on the matter. They are as follows:

- (1) If Juniors only are briefed on each side, then I should have thought that the fee payable to the Junior for the Prosecution is some guide as to what should be paid to the Junior for the Defence.
- (2) Equally, if Leaders and Juniors are briefed on both sides, the fee paid to the Leader for the Prosecution and that paid to his Junior would be some guide as to what should be paid to the Leader and Junior for the Defence.
- (3) Of course in cases under (1) and (2) above it does not follow that the fees of Defending Counsel should be the same as those for Prosecuting Counsel. They might be more or less according to the circumstances. In the majority of cases, however, there will probably be no reason for any differentiation.
- (4) A more difficult question arises when the Prosecution employs a Leader and a Junior and the Defence has a Junior only. In such a case it could and indeed has been argued that the fee payable to the Defending Junior should approximate to the fee which the Prosecution Junior gets by virtue of the two-thirds rule. I myself think that this is wrong. Assuming that the Leader for the Prosecution gets 250 guineas and his Junior, as a result of the two-thirds rule, gets 166 guineas, it would be wrong to give the Defending Junior 166 guineas if any competent Junior briefed alone for the Prosecution would have done the work for less. Equally, if the Leader gets 100 guineas and his Junior 66 guineas, it does not follow that the Defending Junior should get only 66 guineas if a competent Junior for the Prosecution, doing the case alone, would have got more. I think the proper approach is to ask oneself what a competent Junior briefed alone for the Prosecution would have done the work for and then to use that as a guide towards fixing the fee of the Junior for the Defence.
- (5) Another difficult case is where the Junior alone has been briefed for the Prosecution but the Defence is represented by a Leader and a Junior. In such a case it would I think be wrong to fix the Leader's fee by reference to what has been paid to the Prosecuting Junior. Whoever has granted a Defence Certificate has thought that the Defence should have a Leader. Accordingly I think that his fee should be fixed by reference to what an ordinary competent Leader would have done the work for if he had been briefed for the Prosecution.

## APPENDIX 2

Average Fees paid to Counsel and Solicitors at Assizes  
and Quarter Sessions

## GUILTY PLEAS

Offence	Court	Defence Counsel				Defence Solicitor			
		No. of Cases	Brief Fee	Other Fees	Total Average fee per case	No. of Cases	Basic Fee	Other Fees	Total Average fee per case
Violence (excluding murder)	Boro. Q.S.	18	£ s. d. 10 1 9	£ s. d. 1 17 9	£ s. d. 11 19 6	9	£ s. d. 11 3 9	—	£ s. d. 11 3 9
	Co. Q.S.	11	10 0 7	1 9 0	11 9 7	10	12 17 3	—	12 17 3
	Assizes	72	15 14 5	1 4 5	16 18 10	54	18 18 3	8 7	19 6 10
Sexual Offences	Boro. Q.S.	39	10 17 4	18 10	11 16 2	28	12 14 4	—	12 14 4
	Co. Q.S.	37	11 2 10	1 11 6	12 14 4	36	11 9 8	2 11	11 12 7
	Assizes	95	13 0 0	1 7 4	14 7 4	74	15 3 4	9 4	15 12 8
Robbery, Fraud & Larceny	Boro. Q.S.	538	11 17 1	1 5 3	13 2 4	314	12 10 11	2 3	12 13 2
	Co. Q.S.	318	11 4 4	14 1	11 18 5	263	12 5 3	1 7	12 6 10
	Assizes	62	15 7 8	2 8 9	17 16 5	47	17 14 2	1 19 3	19 13 5

## NOT GUILTY PLEAS

Violence (excluding murder)	Boro. Q.S.	22	24 5 5	2 17 11	27 3 4	20	20 14 10	15 9	21 10 7
	Co. Q.S.	21	21 7 9	6 1 1	27 8 10	21	17 2 9	3 6 0	20 8 9
	Assizes	52	27 10 3	14 8 11	41 19 2	50	27 3 1	9 8 2	36 11 3
Sexual Offences	Boro. Q.S.	22	20 8 0	2 5 0	22 13 0	19	20 11 1	1 2 1	21 13 2
	Co. Q.S.	28	23 15 6	3 16 1	27 11 7	27	21 18 1	2 18 4	24 16 5
	Assizes	38	23 12 0	7 11 10	31 3 10	32	25 2 4	6 13 11	31 16 3
Robbery, Fraud & Larceny	Boro. Q.S.	152	22 14 9	5 5 7	28 0 4	122	23 5 0	1 19 2	25 4 2
	Co. Q.S.	175	22 7 9	5 4 3	27 12 0	157	22 13 8	2 15 4	25 9 0
	Assizes	28	28 10 0	81 7 11	109 17 11	22	33 1 9	39 7 9	72 9 6

## APPENDIX 3

## Analysis of Brief Fees and Basic Fees paid to Defence Counsel and Solicitors at Assizes and Quarter Sessions

## GUILTY PLEAS

(The figures shown are percentages of the total number of cases in each category)

Offence	Court	Defence Counsel: Brief Fees							Defence Solicitor: Basic Fees					
		£8 13 0 to £12 0 0	£8 13 0 to £12 0 0	£ 12 to 18	£ 18 to 24	£ 24 to 30	£ 30 to 45	£45 0 0 to £64 10 0	£8 8 0 to £12	£ 12 to 18	£ 18 to 24	£ 24 to 30	£ 30 to 45	£45 0 0 to £78 15 0
Violence (excluding murder)	Boro. Q.S.	61.1	16.7	22.2					33.3	33.3				
	Co. Q.S.	36.4	54.5	9.1					20	60	10			
	Assizes	9.7	29.2	47.2	9.7	1.4	2.8		9.3	38.9	18.5	5.5	7.4	
Sexual Offences	Boro. Q.S.	46.1	35.9	15.4	2.6				32.1	21.4		14.3		
	Co. Q.S.	40.5	24.3	32.4		2.7			27.8	36.1	2.8	2.8		
	Assizes	18.9	24.2	47.4	8.4		1.1		21.6	28.4	10.8	8.1	1.4	
Robbery, Fraud and Larceny	Boro. Q.S.	52.8	21.9	19.9	3.5	1.5	0.4		30.3	26.4	8.9	2.9	1.6	0.3
	Co. Q.S.	45	24.2	25.2	4.4	0.9	0.3		30.8	27.4	3.4	5.7		0.4
	Assizes	16.1	16.1	51.6	9.7	3.2	1.6	1.6	14.9	28.8	14.9	10.6	10.6	

# APPENDIX 4

## Analysis of Brief Fees and Basic Fees paid to Defence Counsel and Solicitors at Assizes and Quarter Sessions

### NOT GUILTY PLEAS

(The figures shown are percentages of the total number of cases in each category)

Offence	Court	Defence Counsel: Brief Fees							Defence Solicitor: Basic Fees						
		£8 13 0 to £12 0 0	£12 0 0 to £18 0 0	£18 0 0 to £24 0 0	£24 0 0 to £30 0 0	£30 0 0 to £45 0 0	£45 0 0 to £64 10 0	Over £64 10 0	£8 8 0 to £12 0 0	£12 0 0 to £20 0 0	£20 0 0 to £38 0 0	£38 0 0 to £40 0 0	£40 0 0 to £24 0 0	£24 0 0 to £30 0 0	£30 0 0 to £45 0 0
Violence (excluding murder)	Boro. Q.S.		18.2	22.7	36.4	18.2	4.5		5	5	20	40	20	10	
	Co. Q.S.		33.3	57.1		9.5			9.5	19	38.1	23.8		9.5	
	Assizes		23.1	32.7	21.1	17.3	5.8		2	14	40	18	16	10	
Sexual Offences	Boro. Q.S.		13.6	31.8	18.2	27.3	9.1		26.3	15.8	26.3	15.8	10.5	5.3	
	Co. Q.S.	3.6	39.2	28.6	14.3	10.7	3.6		3.7	40.7	22.2	7.4	7.4	7.4	
	Assizes	2.6	21	21	31.6	18.4			3.1	18.8	28.1	28.1	21.9		
Robbery, Fraud and Larceny	Boro. Q.S.	2	3.3	34.9	22.4	17.7	11.2	5.9	9	20.5	23	19.6	19.6	8.2	
	Co. Q.S.	2.9	8	33.1	24	19.4	10.9	1.7	5.1	24.2	28	21	12.7	2.5	
	Assizes			28.6	14.3	28.6	17.8	10.7	4.6	13.6	18.2	13.6	22.7	22.7	4.6

## APPENDIX 5

Trials for Murder: Fees paid to Defence Counsel and Solicitors  
GUILTY PLEAS

COURT	DEFENCE COUNSEL				DEFENCE SOLICITOR		TOTAL FEES PAID
	LEADER		JUNIOR		BASIC FEE	OTHER FEES	
	Brief Fee	Other Fees	Brief Fee	Other Fees			
	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.
BIRMINGHAM Assizes ..	80 12 6	—	53 15 0	—	52 10 0	—	186 17 6
BRISTOL Assizes ..	—	—	48 5 0	22 16 0	105 0 0	—	176 1 0
NOT GUILTY PLEAS							
BIRMINGHAM Assizes ..	80 12 6	43 0 0	53 15 0	29 2 0	57 15 0	15 15 0	279 19 6
	80 12 6	43 0 0	53 15 0	29 2 0	57 15 0	15 15 0	279 19 6
	86 0 0	43 0 0	58 1 0	27 0 0	63 0 0	15 15 0	292 16 0
DEVON Assizes	107 10 0	233 17 0	72 0 6	145 10 0	126 0 0	84 0 0	768 17 6
GLAMORGAN Assizes	107 10 0	16 10 0	72 0 6	2 7 0	94 10 0	—	292 17 6
LANCASTER Assizes	82 10 0	3 10 6	55 0 0	2 7 6	67 13 0	—	211 1 0
	82 10 0	84 18 6	55 0 0	57 7 6	120 15 0	21 0 0	421 11 0
STAFFORD Assizes	96 15 0	—	64 10 0	—	78 15 0	—	240 0 0
	96 15 0	—	64 15 0	—	63 0 0	—	224 10 0
	96 15 0	48 5 0	65 0 0	24 18 0	84 0 0	42 0 0	360 18 0
	96 15 0	—	64 10 0	—	63 0 0	—	224 5 0
	157 10 0	403 2 6	107 10 0	268 15 0	105 0 0	262 10 0	1,304 7 6
SUSSEX Assizes	80 12 6	16 10 0	53 15 0	6 11 0	67 4 0	—	224 12 6
	75 5 0	—	50 7 0	24 18 0	38 17 0	15 15 0	205 2 0
CENTRAL CRIMINAL COURT	53 15 0	105 2 0	35 13 0	60 11 0	63 0 0	—	318 1 0
	107 10 0	335 12 0	72 2 0	227 16 0	131 5 0	94 10 0	968 15 0
	107 10 0	325 18 0	72 2 0	222 8 6	105 0 0	94 10 0	977 8 6
	107 10 0	325 18 0	72 2 0	222 8 6	131 5 0	94 10 0	953 13 6
	107 10 0	325 18 0	72 2 0	222 8 6	105 0 0	94 10 0	927 8 6
	107 10 0	—	80 15 0	265 10 0	47 5 0	126 0 0	519 10 0
	107 10 0	351 12 0	72 2 0	151 0 0	59 17 0	126 0 0	868 1 0
CROWN COURT	78 15 0	3 3 0	52 10 0	2 2 0	105 0 0	—	241 10 0
	105 0 0	10 10 0	70 7 0	2 2 0	136 10 0	—	324 9 0
MANCHESTER	84 0 0	97 13 0	56 14 0	66 3 0	341 5 0	21 0 0	666 15 0

## APPENDIX 6

Average Fees paid under a legal aid certificate  
(Bills paid during the year ended 30th September, 1961)  
I. Cases where Counsel not assigned; one defendant only

AREA (1)	SUMMARY TRIAL					PRELIMINARY HEARING				
	Amount authorised (Less Dis- bursements) (2)	No. of Cases (3)	Average amount per Case (Less Dis- bursements) (4)	Dis- bursements (5)	Total paid (6)	Amount authorised (Less Dis- bursements) (7)	No. of Cases (8)	Average amount per Case (Less Dis- bursements) (9)	Dis- bursements (10)	Total paid (11)
	£ s. d.		£ s. d.	£ s. d.	£ s. d.	£ s. d.		£ s. d.	£ s. d.	£ s. d.
AREA No. 1	10,130 3 6	599	16 18 3	209 10 0	10,339 13 6	5,260 15 6	264	19 18 7	132 8 5	5,393 3 11
AREA No. 2	4,525 19 6	325	13 18 6	99 1 3	4,625 0 9	4,055 13 0	205	19 15 8	103 11 4	4,159 4 4
AREA No. 3	5,424 19 8	414	13 2 1	150 6 8	5,575 6 4	5,780 3 0	267	21 12 11	149 9 5	5,929 12 5
AREA No. 4	5,337 12 0	322	16 11 6	226 7 0	5,563 19 0	4,244 0 3	183	23 3 10	215 6 5	4,459 6 8
AREA No. 5	3,792 10 0	218	17 7 11	31 7 3	3,823 17 3	2,474 8 0	118	20 19 4	60 12 9	2,535 0 9
AREA No. 6	3,482 10 0	250	13 18 8	54 5 2	3,536 15 2	4,575 15 6	201	22 15 4	106 14 8	4,682 10 2
AREA No. 7	4,144 16 2	288	14 7 10	63 15 10	4,208 12 0	9,664 19 2	262	36 17 9	439 3 6	10,104 2 8
AREA No. 8	1,975 4 0	173	11 8 4	42 10 5	2,017 14 5	2,453 16 6	148	16 11 7	65 8 0	2,519 4 6
AREA No. 9	2,978 19 6	200	14 17 11	55 8 5	3,034 7 11	3,552 5 0	161	22 1 3	62 6 7	3,614 11 7
AREA No. 10	3,086 15 6	260	11 17 5	42 15 8	3,129 11 2	3,285 15 6	182	18 1 1	53 14 4	3,339 9 10
AREA No. 11	4,384 2 8	324	13 10 8	156 9 5	4,540 12 1	4,088 7 0	223	18 6 8	124 1 7	4,212 8 7
AREA No. 12	1,236 10 5	101	12 4 10	40 12 3	1,277 2 8	1,557 4 3	98	15 17 9	46 10 6	1,603 14 9
TOTALS	50,500 2 11	3,474	14 10 9	1,172 9 4	51,672 12 3	50,993 2 8	2,312	22 1 1	1,559 7 6	52,552 10 2



# APPENDIX 6 (Continued)

Average Fees paid under a legal aid certificate  
(Bills paid during the year ended 30th September, 1961)

II. Cases where Counsel not assigned; more than one defendant

AREA (1)	SUMMARY TRIAL					PRELIMINARY HEARING				
	Amount authorised (Less Dis- bursements) (2)	No. of Cases (3)	Average amount per Case (Less Dis- bursements) (4)	Dis- bursements (5)	Total paid (6)	Amount authorised (Less Dis- bursements) (7)	No. of Cases (8)	Average amount per Case (Less Dis- bursements) (9)	Dis- bursements (10)	Total paid (11)
AREA No. 1	£ s. d. 1,765 1 6	81	£ s. d. 21 15 10	£ s. d. 25 18 4	£ s. d. 1,790 19 10	£ s. d. 1,274 6 6	46	£ s. d. 27 14 0	£ s. d. 22 19 7	£ s. d. 1,297 6 1
AREA No. 2	697 13 6	23	30 6 8	12 9 6	710 3 0	701 18 6	29	24 4 1	8 6 6	710 5 0
AREA No. 3	254 19 0	11	23 3 6	4 15 6	259 14 6	440 2 6	20	22 0 1	17 4 1	457 6 7
AREA No. 4	619 14 4	27	22 19 1	17 11 6	637 5 10	752 17 10	20	37 12 11	37 0 0	789 17 10
AREA No. 5	424 5 6	19	22 6 7	3 0	424 8 6	230 1 4	10	23 0 9	—	230 1 4
AREA No. 6	262 6 6	13	20 3 7	2 14 9	265 1 3	380 19 0	11	34 12 8	2 16 4	383 15 4
AREA No. 7	610 2 0	30	20 6 9	1 16 3	611 18 3	2,406 19 10	27	89 2 11	9 2 6	2,416 2 4
AREA No. 8	226 11 0	14	16 3 8	5 5 0	231 16 0	567 19 6	23	24 13 11	8 5 0	576 4 6
AREA No. 9	328 12 5	18	18 5 1	14 0	329 6 5	414 8 3	13	31 17 9	1 14 6	416 2 9
AREA No. 10	328 16 6	17	19 6 10	2 3 6	331 0 0	235 7 0	13	18 2 1	1 17 0	237 4 0
AREA No. 11	556 0 7	27	20 11 10	8 5 6	564 6 1	948 15 7	38	24 19 4	14 10 0	963 5 7
AREA No. 12	36 19 3	2	18 9 8	—	36 19 3	251 7 4	12	20 18 11	8 3 6	259 10 10
TOTALS	6,111 2 1	282	21 13 5	81 16 10	6,192 18 11	8,605 3 2	262	32 16 9	131 19 0	8,737 2 2

## APPENDIX 6 (Continued)

Average Fees paid under a legal aid certificate  
(Bills paid during the year ended 30th September, 1961)  
III. Cases where Counsel assigned

## PRELIMINARY HEARING

AREA (1)	PAYMENTS TO SOLICITORS					PAYMENTS TO COUNSEL	
	Amount authorised (Less Dis- bursements) (2)	No. of Cases (3)	Average Amount per Case (Less Disbursements) (4)	Disbursements (5)	Total paid (6)	Amount authorised (7)	No. of Cases (8)
AREA No. 1 ..	£ s. d. 605 9 2	13	£ s. d. 46 11 6	£ s. d. 10 3 9	£ s. d. 615 12 11	£ s. d. 414 6 6	13
AREA No. 2 ..	167 10 0	4	41 17 6	14 15 9	182 5 9	198 6 0	5
AREA No. 3 ..	144 17 6	4	36 4 4	22 6 10	167 4 4	144 3 0	4
AREA No. 4 ..	376 4 0	6	62 14 0	43 3 6	419 7 6	380 10 0	6
AREA No. 5 ..	131 5 0	1	131 5 0	4 0 6	135 5 6	84 2 0	1
AREA No. 6 ..	252 0 0	5	50 8 0	3 8 6	255 8 6	158 0 0	5
AREA No. 7 ..	365 12 0	7	52 4 7	1 18 8	367 10 8	268 3 6	7
AREA No. 8 ..	127 10 0	2	63 15 0	—	127 10 0	98 2 0	2
AREA No. 9 ..	—	—	—	—	—	—	—
AREA No. 10 ..	145 19 0	3	48 13 0	12 0	146 11 0	101 14 0	3
AREA No. 11 ..	475 2 6	5	95 0 6	26 19 6	502 2 0	362 4 0	5
AREA No. 12 ..	263 0 0	1	263 0 0	52 0 0	315 0 0	315 0 0	1
TOTALS ..	3,054 9 2	51	59 17 10	179 9 0	3,233 18 2	2,524 11 0	52

## APPENDIX 7

Analysis of Basic Fees paid during the year ended 30th September, 1961,  
to Solicitors assigned under a legal aid certificate

## (1) SUMMARY TRIAL

AREA (1)	Basic Fee 6 gns. and under (2)		Basic Fee 7 gns. (3)		Basic Fee 8 gns. (4)		Basic Fee 9 gns. (5)		Basic Fee 10 gns. (6)		Basic Fee Over 10 gns. to and including 12 gns. (7)		Basic Fee Over 12 gns. to and including 15 gns. (8)		Basic Fee Over 15 gns. to and including 20 gns. (9)		Basic Fee Over 20 gns. to and including 45 gns. (10)		Basic Fee Over 45 gns. (11)		TOTAL (12)	
	No. of Cases	% of Total Cases (C.12)	No. of Cases	% of Total Cases (C.12)	No. of Cases	% of Total Cases (C.12)	No. of Cases	% of Total Cases (C.12)	No. of Cases	% of Total Cases (C.12)	No. of Cases	% of Total Cases (C.12)	No. of Cases	% of Total Cases (C.12)	No. of Cases	% of Total Cases (C.12)	No. of Cases	% of Total Cases (C.12)	No. of Cases	% of Total Cases (C.12)		
No. 1	..	23	3	9	1	28	4	17	2	72	11	120	18	199	29	146	22	66	10	—	680	
No. 2	..	19	5	10	3	30	9	11	3	69	20	60	17	81	23	44	13	23	7	1	348	
No. 3	..	31	7	13	3	65	15	22	5	95	23	64	15	61	15	60	14	14	3	—	425	
No. 4	..	11	3	13	4	26	7	14	4	39	11	53	15	68	20	69	20	53	15	3	349	
No. 5	..	8	3	6	3	8	3	14	6	21	9	44	19	50	21	54	23	31	13	1	237	
No. 6	..	19	7	8	3	25	9	25	10	43	16	42	16	50	19	25	10	26	10	—	263	
No. 7	..	11	3	10	3	21	7	24	8	50	16	49	15	75	24	48	15	29	9	1	318	
No. 8	..	22	12	11	6	19	10	24	13	37	20	36	19	20	11	16	9	1	—	1	187	
No. 9	..	14	6	11	5	22	10	12	6	27	12	33	15	45	21	41	19	13	6	—	218	
No. 10	..	50	18	14	5	33	12	47	17	25	9	38	14	29	10	24	9	16	6	1	277	
No. 11	..	40	12	19	5	29	8	15	4	68	19	51	15	59	17	45	13	22	6	3	351	
No. 12	..	17	16	5	5	13	13	14	13	13	9	9	12	11	11	11	9	9	—	—	103	
TOTALS	..	265	7	129	3	319	9	239	6	559	15	599	16	749	20	583	16	303	8	11	—	3756

## APPENDIX 7 (Continued)

Analysis of Basic Fees paid during the year ended 30th September, 1961,  
to Solicitors assigned under a legal aid certificate

## (2) PRELIMINARY HEARING (Counsel not assigned)

AREA	(1)	Basic Fee 6 gns. and under		Basic Fee 7 gns.		Basic Fee 8 gns.		Basic Fee 9 gns.		Basic Fee 10 gns.		Basic Fee Over 10 gns. to and including 12 gns.		Basic Fee Over 12 gns. to and including 15 gns.		Basic Fee Over 15 gns. to and including 20 gns.		Basic Fee Over 20 gns. to and including 45 gns.		Basic Fee Over 45 gns.		TOTAL
		No. of Cases	% of Total Cases (C.12)	No. of Cases	% of Total Cases (C.12)	No. of Cases	% of Total Cases (C.12)	No. of Cases	% of Total Cases (C.12)	No. of Cases	% of Total Cases (C.12)	No. of Cases	% of Total Cases (C.12)	No. of Cases	% of Total Cases (C.12)	No. of Cases	% of Total Cases (C.12)	No. of Cases	% of Total Cases (C.12)	No. of Cases	% of Total Cases (C.12)	
No. 1	..	11	4	3	1	6	2	4	1	24	8	63	20	88	28	58	19	51	16	2	1	310
No. 2	..	4	2	8	3	13	6	5	2	28	12	33	14	53	23	41	17	46	20	3	1	234
No. 3	..	12	4	3	1	16	6	11	4	40	14	33	11	47	16	58	20	60	21	7	3	287
No. 4	..	2	1	2	1	8	4	5	2	20	10	19	9	38	19	44	22	60	30	5	2	203
No. 5	..	3	2	2	2	1	1	4	3	12	9	20	16	22	17	28	22	35	27	1	1	128
No. 6	..	5	2	4	2	10	5	16	7	21	10	30	14	32	15	38	18	50	24	6	3	212
No. 7	..	3	1	6	2	13	4	11	4	21	7	49	17	45	16	55	19	67	23	19	7	289
No. 8	..	3	2	6	4	14	8	11	7	19	11	31	18	33	19	24	14	28	16	2	1	171
No. 9	..	8	5	1	1	14	8	4	2	16	9	18	10	28	16	33	19	49	28	3	2	174
No. 10	..	20	10	4	2	13	7	23	12	13	7	30	15	26	13	27	14	33	17	6	3	195
No. 11	..	10	4	6	2	19	7	15	6	46	18	40	15	41	16	41	16	29	11	14	5	261
No. 12	..	11	10	4	4	10	10	6	5	6	5	18	16	21	19	18	16	15	14	1	1	110
TOTALS	..	92	4	49	2	137	5	115	4	266	10	384	15	474	19	465	18	523	20	69	3	2574

# APPENDIX 8

## Analysis of Appeals made to The Law Society under paragraph 7 of The Legal Aid in Magistrates Courts (Criminal Proceedings) Scheme, 1960 (14th March, 1960 to 31st December, 1961)

Case No.	Amount charged by Solicitor	Area Committee		Date before Council	Council's Decision	Increase (if any)	Total Amount Allowed to Solicitor	Comments
		No.	Assessment					
1	£ s. d. 18 18 0	10	£ s. d. 12 12 0	7.10.60	Recommend increase	£ s. d. 6 6 0	£ s. d. 18 18 0	Question of principle
2	11 0 0	2	10 10 0	7.10.60	Recommend increase	10 0	11 0 0	
3	18 18 0	8	15 15 0	2.12.60	Recommend increase	3 3 0	18 18 0	
4	36 15 0	11	21 10 0	2.12.60	Recommend increase	10 0 0	31 10 0	
5A	12 12 0	11	12 12 0	2.12.60	No change	None	12 12 0	1st Defendant
5B	9 9 0	11	5 0 8	2.12.60	No change	None	5 0 8	2nd Defendant
5C	9 9 0	11	2 10 4	2.12.60	No change	None	2 10 4	3rd Defendant
6	30 0 0	11	15 15 0	2.12.60	No change	None	15 15 0	
7	42 0 0	7	31 10 0	13.1.61	No change	None	31 10 0	
8	31 10 0	2	15 15 0	13.1.61	Recommend increase	3 3 0	18 18 0	
9	15 15 0	11	9 9 0	2.6.61	Recommend increase	2 2 0	11 11 0	
10	42 0 0	1	29 8 0	26.7.61	No change	None	29 8 0	
11	18 18 0	11	10 10 0	13.10.61	Recommend increase	5 5 0	15 15 0	

## Suggested Notes for the Guidance of Panel Solicitors

## 1. APPLICATION FOR PAYMENT OF COSTS

Payments of costs in respect of work done by solicitors and counsel under a defence certificate granted pursuant to section 1 of the Poor Prisoners' Defence Act, 1930; or an appeal aid certificate granted pursuant to the Summary Jurisdiction (Appeals) Act, 1933; or pursuant to legal aid granted by virtue of section 10 of the Criminal Appeal Act, 1907, is made out of local funds subject to repayment to the council of the county or county borough concerned by the Secretary of State in accordance with arrangements made by him with the approval of the Treasury—section 23 of the Legal Aid and Advice Act, 1949.

Payment of such costs is authorised after taxation by the following taxing officers:

- (i) Defence certificate (assizes)—clerk of assize.
- (ii) Defence certificate (quarter sessions) and appeal aid certificate—clerk of the peace.
- (iii) Court of Criminal Appeal—The Registrar of that court.

## 2. INFORMATION AND DOCUMENTS REQUIRED ON APPLICATION

(1) A solicitor applying for taxation of costs in the above cases should lodge with the appropriate taxing officer:

- (i) a bill of costs setting out:
  - (a) a summary in narrative form of the work done;
  - (b) a basic fee for conducting the defence within the scale prescribed by the relevant Regulations;
  - (c) additional fees, within the scale prescribed by Regulation, for attendance at court on every day on which an adjourned hearing takes place;
  - (d) where two or more persons jointly charged are represented, an additional fee for such work within the proportion prescribed by Regulation;
  - (e) a fee for work done in accordance with the Regulations, and within the scale prescribed, in giving notice of appeal; or of application for leave to appeal; or applying for a case to be stated;
  - (f) disbursements, travelling and other out-of-pocket expenses actually and reasonably incurred;
- (ii) counsel's endorsed brief, and counsel's fee note, if any;
- (iii) where appropriate, a statement in support of application for a certificate referred to in Notes (1) and (2) below;
- (iv) vouchers or receipts for out-of-pocket expenses incurred or paid.

(2) The Regulations governing the taxation or assessment of costs in respect of legal aid granted under the provisions of the above Acts are as follows:

- (a) the Poor Prisoners' Defence (Defence Certificate) Regulations, 1960—S.I. No. 260.
- (b) The Appeal Aid Certificate Rules, 1960—S.I. No. 258.
- (c) The Criminal Appeal (Fees and Expenses) Regulations, 1960—S.I. No. 259.

*Note:* (1) Regulation 5 of the Poor Prisoners' Defence (Defence Certificate) Regulations, Rule 6 of the Appeal Aid Certificate Rules and Regulation 8 of the Criminal Appeal (Fees and Expenses) Regulations, provide that where the sums payable by virtue of the Regulations would not provide fair remuneration, the court may certify accordingly and such fees in respect of the work to which the certificate relates shall be allowed as represent fair remuneration according to the work actually and reasonably done. Where application is made for a certificate, that but for the provisions of the above mentioned Regulation or Rule, the sums otherwise payable would not provide fair remuneration, a fee regarded as fair remuneration for the work actually and reasonably done should be included in the bill in lieu of that ordinarily prescribed by the Regulations.

(2) Where application is made for a certificate under the Regulations or Rules referred to in Note (1) above, the bill should include a narrative, or be supplemented by a separate statement, setting out all relevant circumstances and the grounds upon which application for the certificate is made, in relation to the whole or to any part of the work for which a fee in excess of the maximum prescribed by the scales is regarded as appropriate.

(3) Where costs for work done in the same case under a legal aid certificate have already been determined, details of the work for which payment has been made, and the amount allowed therefor, shall be provided for the taxing officer.

### 3. THE BASIS OF ASSESSMENT OF COSTS

The sums payable to a solicitor or counsel will take into account all the relevant circumstances including the nature, importance, complexity and difficulty of the work and the time involved (including travelling time) and time spent at court on any day waiting for the case to be heard if the case was in the day's List, and shall allow such amounts as appear to the taxing officer to represent fair remuneration for the work actually and reasonably done. No sum will be allowed in respect of any conference, consultation, attendance or visit unless the taxing officer is satisfied that it was reasonably necessary, and in taxing and assessing the sums to be paid to solicitor or counsel, the taxing officer will take into account any payment already made in the same case under a legal aid certificate.

### 4. SCALE OF FEES

If it appears to the taxing officer in taxing or assessing costs that the scales of fees referred to in paragraph 2(2) above or any part of them, would not provide fair remuneration according to the work actually and reasonably done, he may certify accordingly and, where he so certifies any limitation contained therein on the amount of any fee payable shall not apply.

### 5. TAXATION OF COSTS

It is considered that to give effect to the principle enacted in section 21 of the Legal Aid and Advice Act, 1949, that "fair remuneration according to the work actually and reasonably done" should be allowed, a defending solicitor should, in appropriate cases, attend the taxation of his costs, as is the practice in civil cases, in order to attempt to justify the amount charged in the bill and to assist the taxing officer in arriving at a fair result. There may be cases, for example,

where only the minimum fee is charged, where attendance at the taxation will not be necessary, but generally it is thought that the attendance of the defending solicitor at the taxation will be necessary.  
12e.

6. Where a solicitor or counsel is dissatisfied with the amount allowed on taxation, or where the taxing officer rejects an application for a certificate that the sums ordinarily permitted by the Rules or Regulations would not provide fair remuneration, representations may be made to the presiding Judge against the taxing officer's assessment or decision. No such right of review exists, however, in respect of costs assessed or taxed by the Registrar of the Court of Criminal Appeal.

7. A precedent for a bill of costs for the more complex and difficult type of case, and a specimen form of bill for use in the simple straightforward type of case are appended.



[COURT]

## PRECEDENT FOR A BILL OF COSTS

*R. v.* .....

(DEFENCE CERTIFICATE DATED .....

*Taxed  
Off*  
£ s. d.*Date**Item No. in  
Regulations**Item*

1(1)

## (a) INSTRUCTIONS TO DEFEND

Instructions to defend accused. Perusing and considering indictment and depositions, folios ..... (engaged ..... hours).  
 Attending accused at ..... and taking proof of evidence (engaged ..... hours).

## (b) WITNESSES

Attending witnesses and taking proofs of evidence as follows: Mr. ....  
 at..... (engaged ..... hours).

Attendances upon and correspondence with Mr.....  
 (expert witness) and arranging for him to qualify to give evidence on behalf of accused. Perusing and considering his report (engaged ..... hours).

Visit to locus (engaged ..... hours);  
 instructing surveyor/photographer to prepare plans/photographs.

## (c) PREPARATION FOR TRIAL, ETC.

Perusing and considering correspondence, accounts, statements, police reports, plans, photographs, etc., (engaged ..... hours).

Attendances upon Director of Public Prosecutions/or prosecuting solicitor  
 [Number, time spent, and details.]

Drawing instructions to counsel to advise; attending him with papers; perusing and considering opinion of counsel.

General instructions for trial.

[Include summary of other work done, for example, other attendances; enquiries and efforts to trace witnesses; enquiries as to evidence available for the defence; applications to Court, etc., and instructions to counsel for such applications. Specify any special circumstances, importance, complexity or difficulty of work—see Regulation 4(1)]; considering law, facts and evidence; general care and attention in preparation of defence.

Drawing brief to counsel to attend hearing on behalf of accused, folios .....  
Drawing proofs of evidence of accused and witnesses, folios.....  
Fair copy for counsel. Copy documents to accompany (specify these).  
Attending counsel with brief and papers.  
Attending conference/consultation, with counsel [engaged (with travelling time) ..... hours].  
Copy documents for Court.  
Arranging for attendance of accused and witnesses at trial. [Attendances to obtain issue of subpoenas and service.]

(d) TRIAL

Attending trial on first day at .....  
(engaged ..... hours).

(e) TAXATION OF COSTS AND  
MISCELLANEOUS

Letters (number), attendances upon the telephone, messages, etc.  
Attending taxation of costs, vouching disbursements and obtaining authority for payment.

*Note:* a gross sum charge under Regulation 1(1), as affected by Regulation 5, if applicable, should be inserted to cover the items narrated above.

£ s. d.

1(2)    (f) ADJOURNED HEARING

Attending adjourned hearing on .....  
(engaged ..... hours).

3        (g) ADDITIONAL CHARGES FOR WORK  
ON BEHALF OF 2ND ACCUSED

Additional charge for preparation and conduct of defence of second accused charged in the same indictment [here indicate any additional work done on behalf of the second accused and not included under Item 1(1)]—see note below.

£ s. d.

Additional charge for attending Court on second and subsequent days of trial on behalf of second accused.

£ s. d.

<i>Taxed Off</i>	<i>Date</i>	<i>Item No. in Regulations</i>	<i>Item</i>	<i>£ s. d.</i>
<i>£ s. d.</i>				

[*Note:* Subject to the provisions of Regulation 5, the additional charges under this item shall not exceed 40% of the amount which would be payable but for the increase.]

(h) ADDITIONAL CHARGES FOR  
WORK ON BEHALF OF 3RD OR  
MORE ACCUSED

Additional charge for preparation and conduct of defence on behalf of persons other than those charged first or second in the indictment [here include details of any additional work done on behalf of such accused not otherwise included in the bill.]  
—see note below.

£ s. d.

Additional charge for attending Court on the second and subsequent days of the trial on behalf of persons other than those charged first or second in the indictment.

£ s. d.

[*Note:* Subject to the provisions of Regulation 5, the additional charges shall not exceed 20% of the amount which would be payable but for the increase.]

6

APPEAL

Attendances upon accused and advising him as to appeal; Drawing instructions to counsel to advise in connection with appeal and attending him therewith. Copy documents for counsel. Perusing and considering counsel's opinion; attendances upon and correspondence with appellant; arranging for Notice of Appeal/or of Application for Leave to Appeal to be completed, and lodged; attendances upon and correspondence with the Registrar of the Court of Criminal Appeal.

£ s. d.

<i>Taxed Off</i> £ s. d.	<i>Date</i>	<i>Item No. in Regulations</i>	<i>Item</i>	£ s. d.
		1(3) (a) (i)	DISBURSEMENTS [Short details of journeys in respect of which travelling expenses are claimed.]	£ s. d.
		1(3) (b)	[Details of other out-of-pocket expenses.]	£ s. d.

*Notes:* 1. Preparation of this bill should be based upon the items prescribed by the Poor Prisoners' Defence (Defence Certificate) Regulations, 1960.

2. Attention is drawn to the "Notes for the Guidance of Panel Solicitors", circulated for the assistance of solicitors in the preparation and taxation of bills of costs for defence certificate cases.

3. Disbursements should be supported on the taxation of the bill by receipts or vouchers for payments made.

4. The solicitor should include in the charges column his assessment of the value of the work done, within the figures prescribed by the Regulations, unless it is a case in which in relation to the whole or to any one item of the bill, the provisions of Regulation 5 apply; in such cases a fee in excess of the maximum prescribed, and assessed to represent "fair remuneration according to the work actually and reasonably done" should be included.

## APPENDIX 11

## SPECIMEN BILL OF COSTS (SHORTENED FORM)

..... Court

## POOR PRISONERS' DEFENCE ACT, 1930

Regina v. ....

(Defence Certificate dated .....)

Date of Trial:

<i>Regulation No.</i>	<i>Item</i>	<i>Amount</i>
1(1)	[Summary in narrative form of work done in preparation of defence. Attending first day of trial.]	£ s. d.
1(2)	Attending adjourned hearing.	£ s. d.
3	(i) Additional fee for person charged second in indictment.	£ s. d.
	(ii) Additional fee for person other than persons charged first or second in indictment.	£ s. d.
6	[Summary in narrative form of work done in connection with appeal, or application for leave to appeal.]	£ s. d.
1(3)	(a) Travelling expenses	£ s. d.
	(b) Other disbursements (specify)	£ s. d.
Total		_____

Solicitors for Defence:

Counsel:

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# **Legal Aid In Criminal Proceedings**

First Report of the Working Party



*LONDON*  
HER MAJESTY'S STATIONERY OFFICE  
1962

# WORKING PARTY ON LEGAL AID IN CRIMINAL PROCEEDINGS

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